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APPENDIX
Volume I

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1093

UNITED STATES OF AMERICA,
Appellant,

v.

PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY, SECOND NATIONAL BANK OF PHILLIPSBURG, AND WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Probable Jurisdiction Noted February 27, 1970

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1093

UNITED STATES OF AMERICA, APPELLANT

v.

PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY, SECOND NATIONAL BANK OF PHILLIPSBURG, AND WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
UNITED STATES OF AMERICA,

CIVIL ACTION No. 56-68

Plaintiff,

v.

THE PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY and THE SECOND NATIONAL BANK OF PHILLIPSBURG,

Defendants.

WILLIAM B. CAMP, Comptroller of the Currency,

INTERVENOR.

RELEVANT DOCKET ENTRIES

1-17-68 Complaint filed 1-16-68.
2-13-68 Answer filed 2-9-68.
2-27-68 Order granting leave to William B. Camp, Comptroller of the Currency to intervene filed 3-21-68.
3-11-68 Answer of intervenor, William B. Camp, Comptroller of the Currency, filed 3-8-68.
12-24-68 Transcript of trial in XI volumes filed 12-23-68.
10-15-69 Opinion, filed 10-14-69 (Shaw) (In favor of defendants and intervenor)
10-15-69 Ordered stay continued until further order of the Court (Shaw). (10-14-69)
10-21-69 Hearing on plaintiff's motion to re-open the record and to amend the final findings of fact and conclusions of law. Ordered motion granted. (Shaw) (10-20-69)
10-21-69 Order continuing the statutory stay for a period of forty days from the date of judgment, etc., filed 10-20-69 (Shaw).

10-21-69 Plaintiff's motion to re-open the record and to amend the final findings of fact and conclusions of law, filed 10-20-69.

10-21-69 Judgment of dismissal of action, without costs, filed 10-20-69 (Shaw).

12-4-69 Notice of appeal, filed 11-28-69.

12-4-69 Amended Notice of Appeal to The Supreme Court of U.S., filed 12-2-69.

12-17-69 Plaintiff's Designation and Certification of Record on Appeal and certificate of service filed.

1-5-70 Order amending opinion filed on Oct. 14, 1969, filed 1-2-70 (Shaw).

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY
(CAPTION OMITTED IN PRINTING)
COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the defendants named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, 38 Stat. 731, as amended by the Act of Congress of December 29, 1950, c. 1184, 64 Stat. 1125 (15 U.S.C. § 18).

2. Each of the defendants has its principal place of business, transacts business, and is found within the District of New Jersey.

II

THE DEFENDANTS

3. The Phillipsburg National Bank and Trust Company, hereinafter referred to as "Phillipsburg National," is made a defendant herein. Phillipsburg National is a banking association organized and existing under the laws of the United States of America, with its principal place of business in Phillipsburg, New Jersey.

4. The Second National Bank of Phillipsburg, hereinafter referred to as "Second National," is made a defendant herein. Second National is a banking association organized and existing under the laws of the United States of America, with its principal place of business in Phillipsburg, New Jersey.

III

DEFINITIONS

5. As used herein, the term "Phillipsburg-Easton" means the cities of Phillipsburg, New Jersey, and Easton, Pennsylvania, and their environs.

IV

TRADE AND COMMERCE

6. Commercial banks fill an essential and unique role in the Nation's economy. Their principal functions are the acceptance of deposits for safekeeping and convenience in making payments by check, the granting of loans or advances of funds to individuals and business firms, and the creation through demand deposits of net additions to the supply of money. Most money payments in the United States are made through checks drawn against demand deposits, and the creation and holding of such deposits is a function peculiar to commercial banks and one which makes them to a great extent the administrators of the Nation's check payment system. Through the making of loans to individuals and businesses, commercial banks supply a significant part of the credit requirements of the Nation's economy. Commercial banks also accept time deposits from various types of depositors and provide a wide variety of other financial services, including personal and corporate trust accounts, the collection of drafts, bills, and other commercial instruments, the acceptance of bills of exchange, the issuance of letters of credit, the sale of cashier's checks, and drafts on correspondent banks, the purchase or sale of securities for customers, the sale of foreign exchange, and the renting of safety deposit boxes. This combination of services is unduplicated by other financial institutions.

7. Commercial banks, because of the importance of bank credit to business and other borrowers and the close relationship of banks with many such borrowers, and because of their holdings of stock in trust accounts, have an important influence on competition in all branches of industry and commerce served by the banking system.

8. Phillipsburg National is the largest of the three commercial banks located in the city of Phillipsburg, and it is third largest of the six banks headquartered in Phillipsburg-Easton. As of September 20, 1966, Phillipsburg National had total assets of $21,529,000, total deposits of $19,983,000, and loans and discounts of $12,342,000. Phillipsburg National presently operates three banking offices, all located within the city of Phillipsburg or environs.

9. Second National is the second largest bank located in the city of Phillipsburg, and the fifth largest bank in Phillipsburg-Easton. As of September 20, 1966, Second National had total assets of $15,867,000, total deposits of $14,498,000, and loans and discounts of $9,478,000. It operates two offices, both located within the city of Phillipsburg.

10. Commercial banking in Phillipsburg-Easton is heavily concentrated. As of September 20, 1966, the two largest banks headquartered there accounted for approximately 56% of total deposits of commercial banking offices in Phillipsburg-Easton, and the three largest banks accounted for approximately 69.4% of such deposits. Phillipsburg National held about 13.5% of the total deposits in all commercial banking offices there, and Second National held about 9.9% of such deposits.

11. If the merger were consummated, the two largest banks would account for approximately 65% of total deposits held by commercial banking offices there, and the three largest would account for approximately 79% of such deposits. Phillipsburg National would become the second largest bank in Phillipsburg-Easton, increasing its share of total deposits from 13.5% to 23.4%, and it would operate five of the 16 commercial banking offices located there.

12. Phillipsburg National and Second National are each substantial competitors in commercial banking in the City of Phillipsburg and in Phillipsburg-Easton. The main offices of Phillipsburg National and Second National are located across the street from each other, as are their respective branches in northeast Phillipsburg. Both defendant banks derive the predominant share of their business from the same area, namely Phillipsburg-Easton. The defendant banks directly compete in this area with each other and with other commercial banks having offices in Phillipsburg-Easton, in offering and performing commercial banking services.

13. Customers of Phillipsburg National and Second National have regularly utilized interstate communications, including the mails, telephone and telegraph, to carry on their business with, apply for, and obtain the services provided by these banks. Phillipsburg National and Second National have regularly utilized interstate communications, including the mails, telephone and telegraph, to conduct business with customers, and with other banks located in states other than New Jersey. Phillipsburg National and Second National are each engaged in interstate commerce.

V

OFFENSE CHARGED

14. Defendants' Phillipsburg National and Second National have entered into an agreement, approved by their respective Boards of Directors on April 14 and April 17, 1967, which, if carried out, will result in a merger of Second National with and into Phillipsburg National under the charter of Phillipsburg National and with the title of Phillipsburg National. The Comptroller of the Currency granted approval of the proposed merger of the defendants on December 18, 1967.

15. The effect of the merger of Phillipsburg National and Second National, pursuant to the agreement described in paragraph 14 above, may be substantially to lessen competition or to tend to create a monopoly in violation of Section 7 of the Clayton Act.

16. The offense alleged in this complaint will be carried out and will continue unless the relief hereinafter prayed for is granted.

VI

EFFECTS

17. The offense alleged in this complaint, if carried out and continued, will have the following effects, among others:

(a) competition between the defendants will be permanently eliminated;

(b) competition generally in commercial banking in

Phillipsburg and Phillipsburg-Easton will be substantially lessened and a tendency to monopoly created; and

(c) concentration in commercial banking in Phillipsburg and Phillipsburg-Easton will be substantially increased.

PRAYER

WHEREFORE, plaintiff prays:

1. That the aforesaid merger of Phillipsburg National and Second National pursuant to the Agreement described in paragraph 14 of this complaint be adjudged unlawful, in violation of Section 7 of the Clayton Act.

2. That the defendants Phillipsburg National and Second National and all persons acting on their behalf be enjoined from carrying out the aforesaid agreement of merger or any similar plan or agreement, the effect of which would be to merge, consolidate, or in any other way combine the businesses of, said defendants.

3. That the plaintiff have such other and further relief as the Court may deem just and proper.

4. That plaintiff recover the costs of this action.

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BADDIA J. RASHID
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
(CAPTION OMITTED IN PRINTING)
ANSWER

The Phillipsburg National Bank and Trust Company and The Second National Bank of Phillipsburg, jointly, by way of answer to the Complaint herein say that:

1. As used herein, the term Trading Area means all of Warren County, New Jersey, the northwestern portion of Hunterdon County, New Jersey, (Alexandria Township, Bethlehem Township, Bloomsbury Borough, Clinton Town, Clinton Township, Flemington Borough, Franklin Township, Frenchtown Borough, Glen Gardner Borough, Hampton Borough, High Bridge Borough, Holland Township, Kingwood Township, Lebanon Borough, Milford Borough, Raritan Township and Union Township), all of Northampton County, Pennsylvania, all of Lehigh County, Pennsylvania, and that portion of Bucks County, Pennsylvania within 15 miles of the Town of Phillipsburg, New Jersey.

2. Defendants admit that plaintiff purports to file the complaint and institute this action under the Clayton Act, but they assert that these proceedings are governed by 12 U.S.C. § 1828, the Bank Merger Act, as amended; except as admitted hereby, defendants deny the averments of paragraph 1.

3. Defendants admit the averments of paragraph 2.

4. Defendants admit the averments of paragraph 3.

5. Defendants admit the averments of paragraph 4.

6. Defendants admit that as used in the complaint, the term "Phillipsburg-Easton" purports to mean the municipalities of Phillipsburg, New Jersey and Easton, Pennsylvania, and their environs, but assert that the area as described by plaintiff is vague and inadequate for a proper consideration of this matter and further assert that the pertinent geographic area in which to view this matter is the Trading Area described herein.

7. Defendants admit that large commercial banks, in general, provide the services listed in paragraph 6. They deny that the averments of paragraph 6 necessarily have a relevance to or properly delineate the scope, nature and emphasis of their own particular activities or areas of competition. Except as admitted hereby defendants are without knowledge or information sufficient to form a belief as to the truth of the

averments of paragraph 6 and leave plaintiff to its proofs thereof as to these two defendants.

8. Defendants deny that the averments of paragraph 7 have a relevance to or properly delineate the scope, nature and emphasis of their own particular activities, or relationship. Except as denied hereby, defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 7 and leave plaintiff to its proofs thereof as to these two defendants.

9. The defendants admit the averments of paragraph 8 in respect to the assets, deposits, loans and discounts and offices of Phillipsburg National. Defendants are without knowledge of the precise boundaries of the geographic area described as the "environs" of Phillipsburg-Easton or of the methods used by plaintiff in asserting the size of a bank, and assert that the Trading Area is the proper geographic area in which to make such a determination, wherefor except as admitted hereby defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 8 and leave plaintiff to its proofs thereof.

10. Defendants admit the averments of paragraph 9 in respect to the assets, deposits, loans and discounts and offices of Second National. Defendants are without knowledge of the precise boundaries of the geographic area described as the "environs" of Phillipsburg-Easton or of the methods used by plaintiff in asserting the size of a bank, and assert that the Trading Area is the proper geographic area in which to make such a determination, wherefor except as admitted hereby defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 9 and leave plaintiff to its proofs thereof.

11. Defendants deny that commercial banking in Phillipsburg-Easton is heavily concentrated. Defendants are without knowledge of the precise boundaries of the geographic area described as the "environs" of Phillipsburg-Easton or of the methods used by plaintiff in asserting the size of a bank, and assert that the Trading Area is the proper geographic area in which to make such a determination, wherefor except as denied hereby defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 10 and leave plaintiff to its proofs thereof.

12. Defendants are without knowledge of the precise boundaries of the geographic area described as the "environs" of Phillipsburg-Easton or of the methods used by plaintiff in asserting the size of a bank, and assert that the Trading Area is the proper geographic area in which to make such a determination, wherefor defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 11 and leave plaintiff to its proofs thereof.

13. Defendants deny the averment of paragraph 12 that they are each substantial competitors in commercial banking in the Town of Phillipsburg and in Phillipsburg-Easton. They admit that their respective main offices are separated by a street but deny that their respective branches are separated merely by a street or are both located in northeast Phillipsburg, and assert that they serve different areas. They admit that they derive the dominant share of their business from the same area but deny that said area is Phillipsburg-Easton, and assert that said area is more properly described as the Trading Area. They admit that they compete with other commercial banks having offices in Phillipsburg-Easton, but assert that they also compete with commercial banks and other financial institutions throughout the Trading Area and beyond. Except as admitted hereby, defendants deny the averments of paragraph 12.

14. Defendants admit the averments of paragraph 13.

15. Defendants admit the averments of paragraph 14 but deny that said merger is an offense.

16. Defendants deny the averments of paragraph 15.

17. Defendants deny the averments of paragraph 16.

18. Defendants admit that the contemplated merger will eliminate such insignificant competition as exists between them, but deny that said merger is an offense. Except as admitted hereby, defendants deny the averments of paragraph 17.

19. In further denial of plaintiff's general averments as to the product market within which defendants compete, defendants assert that they are in competition with many individuals, firms and corporations for the many services they furnish. Such areas of competition, in addition to commercial banks, include, among others:

(a) for time deposits consisting of 71% of the Phillipsburg National Bar'':'s total deposits and 77% of the Second

National total deposits the banks compete with the stock market, building and loans, savings institutions, bond market, U. S. security and savings bond market, insurance companies, mutual funds, pension funds, credit unions and other banks throughout the country where banking by mail is on the increase.

(b) for commercial or demand deposits which constitute 29% and 23% respectively of the two banks' deposits they must compete with banks throughout the Trading Area as well as with the metropolitan banks of Philadelphia and New York. Here, too, banking by mail increases the competition.

(c) for real estate loans which constitute 56% and 76% respectively of the two banks' loan portfolio they must compete with insurance companies, savings institutions and building and loans in various parts of New Jersey and Pennsylvania.

(d) for consumer installment loans which constitute 24% and 10% respectively of their loans they must compete with finance companies, credit unions, small loan companies, diner's clubs, department store credit accounts, travel-on-credit arrangements and hosts of appliance and motor vehicle finance companies associated with or aligned with national corporate manufacturers of autos, TVs, radios and appliances.

(e) for single payment loans to individuals which constitute respectively 10% and 6% of the banks' loans they must compete with finance companies, credit unions, policy loans by insurance companies and others.

(f) for commercial and industrial loans which are but 8% and 3% respectively of total loans they must compete with insurance companies, larger metropolitan banks, the bond market and others.

(g) for check cashing services they must compete with practically all trading outlets in the Trading Area.

(h) for checking accounts they must compete with savings banks in New Jersey which are permitted to conduct such business.

FIRST SEPARATE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND SEPARATE DEFENSE

The proposed merger will not in any section of the country substantially lessen competition or tend to create a monopoly.

THIRD SEPARATE DEFENSE

As and for an affirmative defense, defendants allege that the Bank Merger Act of 1966, 80 Stat. 7, 12 U.S.C., §1828 (c), is an affirmative defense to this action. Said act provides an affirmative defense for defendant banks in this case because any anticompetitive effects of this merger (the existence or substantiality of which defendants deny) are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. 12 U.S.C. §1828(c) (5) (B).

The factors supporting this defense include among others:

(a) automation of the bank's services can be undertaken thus allowing for more prompt and efficient service to the community.

(b) personnel can be procured to fill gaps presently existing thus improving the managerial resources of the bank.

(c) an experienced, full-time trust officer can be hired to undertake development of the bank's lagging trust business.

(d) the increased lending capacity of the merged bank will enable the making of larger loans and will stimulate competition in the development of commercial and industrial business, particularly among small business corporations.

(e) the resulting bank with stronger personnel and more modern facilities will be able to compete more effectively in the Trading Area and beyond.

(f) the resulting bank will be able to extend its services in the Trading Area and beyond.

(g) the resulting bank will continue to maintain all of the five offices presently operated by the two banks so that the public will have access to the services they now enjoy and, in addition, any customer will be able to transact business at any of the five offices.

(h) the resulting bank will have a better capital structure thus guaranteeing further the safety of customer deposits.

(i) the resulting bank will be able to procure capital more readily.

(j) the increased fiscal strength of the resulting bank will enable it to provide better, more varied services to the area.

(k) the resulting bank will be able to engage in new services which are constantly being introduced in modern banking.

FOURTH SEPARATE DEFENSE

Phillipsburg-Easton is not the proper geographic area within which to determine the effects of the proposed merger on competition. The proper geographic area within which to make such a determination is the Trading Area.

MEYNER AND WILEY
Attorneys for The Phillipsburg
National Bank and Trust Company

By
ROBERT B. MEYNER

CARPENTER, BENNETT & MORRISSEY and
ALFRED W. SEISS
Attorneys for The Second National
Bank of Phillipsburg

By
SYLVESTER C. SMITH, JR.

Dated: February 9, 1968

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY
(CAPTION OMITTED IN PRINTING)
ANSWER

Intervenor, William B. Camp, Comptroller of the Currency, by his attorney, answering the Complaint herein, alleges as follows:

I. The Intervenor admits that the plaintiff purports to bring this suit under Section 15, of the Act of Congress of October 15, 1914, chapter 323, 38 Stat. 736, as amended (15 U.S.C. section 25) and in respect to all other allegations of paragraph "1" the Intervenor alleges and avers, that the standards to be applied by the Court in this case, are those set forth in the Act of Congress of February 21, 1966, P.L. 89-356, 80 Stat. 7, amending section (c) of the Federal Deposit Insurance Act (12 U.S.C. 1828) (C).

II. Admits paragraphs "2, 3 and 4" of the Complaint.

III. Admits paragraph "5" of the Complaint as to plaintiff's use of the term "Phillipsburg-Easton" in the Complaint, but the Intervenor denies that the applicable geographic area is as defined by plaintiff.

IV. Intervenor admits the allegations of paragraph "6" of the Complaint, to the effect that banks fill an essential role in the nations economy and that many Commercial banks perform the functions outlined in said paragraph "6", but deny all other allegations contained in said paragraph and deny any implications contained therein that banks are not in competition with other financial institutions.

V. Admits the allegations contained in paragraph "7" except that the Intervenor denies the implication that Commercial banks as financial institutions, are the controlling influence, in the economic life of a Community, Industry and Commerce, that create competition within the purview of the Clayton Act.

VI. The Intervenor admits the averments of paragraph 8 in respect to the assets, deposits, loans and discounts and offices of Phillipsburg National. However, it denies that "Phillipsburg-Easton" is the applicable geographic area to be considered in this matter.

VII. The Intervenor admits the averments of paragraph 9 in respect to the assets, deposits, loans and discounts and Offices

of Second National. However, it denies that "Phillipsburg-Easton" is the applicable geographic area to be considered in this matter.

VIII. Intervenor denies that commercial banking in Phillipsburg-Easton is heavily concentrated. Intervenor is without knowledge of the precise boundaries of the geographic area described as the "environs" of Phillipsburg-Easton or of the methods used by plaintiff in asserting the size of a bank, and asserts that the "Phillipsburg-Easton" area is not the proper geographical area in which to make such a determination. Except as denied hereby, Intervenor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 10.

IX. Intervenor is without knowledge of the precise boundaries of the geographic area described as the "environs" of Phillipsburg-Easton or of the methods used by plaintiff in asserting the size of a bank, and asserts that the "Phillipsburg-Easton" area is not the proper geographical area to be considered in this matter. Intervenor, therefore, is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 11.

X. Intervenor denies the averments of paragraph 12 that the defendants are substantial competitors in commercial banking in the City of Phillipsburg and in Phillipsburg-Easton. It admits that the main offices of the defendants are separated by a street but denies that their branches are separated merely by a street or are located in northeast Phillipsburg, and asserts that they serve different areas. Intervenor admits that they derive the dominant share of their business from the same area but denies that the "Phillipsburg-Easton" area is a proper geographical area to be considered in this matter. It admits that the defendants compete with other commercial banks having offices in Phillipsburg-Easton, as well as with other financial institutions.

XII. Intervenor admits the averments of paragraph 13.

XIII. Intervenor admits the averments of paragraph 14 but denies that said proposed merger is an offense.

XIV. Intervenor denies the averments of paragraphs 15 and 16.

XV. Intervenor admits that the contemplated merger will eliminate such insignificant competition as exists between the defendants, but denies that said merger is an offense. Except

as admitted hereby, Intervenor denies the averments of paragraph 17.

XVI. Intervenor alleges that the Bank Merger Act of 1966, 80 Stat. 7, 12 U.S.C., §1828 (c), is an affirmative defense to this action. Said act provides an affirmative defense in this case because any anticompetitive effects of this merger (the existence or substantiality of which is denied) are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. 12 U.S.C. §1828(c) (5) (B).

PHILIP L. ROACHE, JR.
Attorney, Comptroller of the Currency

Dated: Feb. 21, 1968

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 56-68

UNITED STATES OF AMERICA, Plaintiff,

v.

THE PHILLIPSBURG NATIONAL BANK & TRUST COMPANY and THE SECOND NATIONAL BANK OF PHILLIPSBURG,

Defendants,

and

WILLIAM B. CAMP, Comptroller of the Currency,

Intervenor.

Newark, New Jersey,
September 11, 1968.

Before: The Honorable ROBERT SHAW, U. S. D. J.

Appearances:

UNITED STATES ATTORNEY,
By: KENNETH P. ZAUBER, Esq., Assistant U. S. Attorney.
U.S. DEPARTMENT OF JUSTICE, Antitrust Division,
By: ROBERT C. WEINBAUM, Esq., and
EUGENE T. AUSTIN, Esq.
MEYNER & WILEY, Esqs.,
Attorneys for Phillipsburg National Bank & Trust Co.,
By: Robert B. Meyner, Esq., and
THOMAS D. HOGAN, Esq.
CARPENTER, BENNETT & MORRISSEY, Esqs.,
Attorneys for Second National Bank,
By: SYLVESTER C. SMITH, JR., Esq., and
MICHAEL S. WATERS, Esq.
PHILLIP L. ROACHE, JR., Esq.,
Attorney for the Comptroller of the Currency.

TRANSCRIPT OF OFFICIAL NOTES OF TESTIMONY

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Official Court Reporter
P. O. Box 397
Newark, N. J.

Newark, N. J.
September 11, 1968

[fol. 84] ROBERT LEUPO, sworn.

DIRECT EXAMINATION

BY MR. WEINBAUM:

Q Mr. Leupo, what is your occupation?

A I am an executive vice-president of the Phillipsburg Trust Company and National Association.

Q Can you give us your business and professional background?

A I am an accountant with a background of cost accounting, a background of public accounting, a background of auditing and banking.

[fol. 85] Q How long have you been in banking?

A Eleven years.

Q And when did you join the Phillipsburg Trust Company?

A In May of 1957.

* * * *

[fol. 86] Q How long has your head office been on Memorial Highway?

A Since 1959.

Q Where was it prior to that time?

A On South Main Street, in Phillipsburg.

Q And by South Main Street in Phillipsburg can [fol. 87] you describe for the Court a little bit more about that area?

A Well, South Main Street at that time was the

commercial street in Phillipsburg. The bank was located approximately two blocks–three blocks away from the other banks in the area. That is about the best description.

* * * *

[fol. 88] Q Which of the three banks in Phillipsburg was the first to establish a branch, Mr. Leupo?

A The Phillipsburg Trust Company, National Association.

Q And when was that?

A In 1961.

Q Have the other local banks established branches since that time?

A They have.

Q Mr. Leupo, could you please describe for the Court the various services available at your bank?

A Yes. We have the services of demand accounts, which are checking accounts, savings accounts, we have mortgage services, granting mortgage loans, we have personal loans, we have safe deposit boxes.

Q Approximately how many demand deposit accounts would you estimate you have?

A Approximately 2800.

Q And what is the passbook savings rate that you are presently paying?

A 4 per cent.

Q Were you paying this rate as of the end of the year 1967?

A No, we weren't.

Q What rate were you paying at that time?

A 3-½ per cent.

[fol. 89] Q And when did your rate go up to the present rate?

A Effective July 1, 1968.

Q For how long was your bank paying the 3-½ per cent rate on passbook savings, Mr. Leupo, can you tell us that?

A No, I can't, not the exact years.

Q Do you offer time deposits, Mr. Leupo?

A Yes, we do.

Q And can you explain a little bit about your rate on time deposits?

A We offer time deposits, and certificate deposits at 5 per cent, and the 5-½ per cent rate, comparable to law,

regulations by Federal Reserve, and also the Comptroller's Department.

Q You do offer certain certificates of deposit at 5-½ per cent?

A 5 and 5-½ per cent.

Q What determines, Mr. Leupo, what interest rate your bank will pay on a certificate of deposit?

A What determines it?

Q Yes.

MR. MEYNER: If your Honor please, it seems to me we are really prolonging the record here. It is well established by the Federal authorities as to what [fol. 90]it is. The Court can take judicial notice of it. Or you can put it in the record. I see no point in asking this man that. The 5 per cent up to a certain amount, and the 5-½ per cent over another amount.

THE COURT: Counsel, this is governed by regulations.

MR. WEINBAUM: Your Honor, I would like to establish whether or not there is discretion on the part of his bank on the rate that they may wish to accept deposits at, and what rate they will pay in certain instances. And I believe that there might be some flexibility on the part of the bank.

THE COURT: All right. Go ahead. Objection overruled.

MR. WEINBAUM: Thank you, your Honor.

Q Mr. Leupo, do you pay the maximum rate on a C.D. in all instances?

A Yes.

Q And how about on your time deposits, is there a single rate that you pretty much adhere to?

A The single rate is in accord with our savings rate, time savings rate.

Q The time and savings rate is identical?

A Yes.

Q The 4 per cent.

[fol. 91] A Yes.

Q So that you offer no time and savings deposit between the 4 per cent and the 5 per cent.

A No, we don't.

Q Could you please describe for us, or tell us whether you have any school savings plans?

A No, we don't.

Q Would you please explain in a little more detail the type of mortgage lending that you do?

A Primarily residential.

Q Primarily residential?
A Primarily residential.
Q Do you do any VA lending?
A No.
THE COURT: Counsel, I didn't hear that question.
MR. WEINBAUM: Any Veterans Administration mortgages.
THE WITNESS: No.
Q Do you do any FHA lending?
A No. We have them--let me clarify this. We do have them, but we have not put them on in a number of years. So we have not followed the policy of lending to the VA or the FHA.
Q Do you do any commercial and industrial lending?
[fol. 92] A Yes.
Q And what are your rates in those situations?
A Comparable rate by law that it may be at the time. Maybe 6, maybe 7, maybe 8.
Q This varies?
A That is correct.
Q What are the factors upon which the rate depends, for instance?
A The money situation, the demand and money situation.
Q Any other factors that the bank takes into consideration in the rate it sets?
A The other factor naturally would be the customer, the relations with the customer.
Q Do you do any installment lending?
A Yes.
Q Do you lend money on automobiles?
A Yes.
Q Appliances.
A Yes.
Q Do you do any direct lending as opposed to indirect lending?
A Yes.
Q Do you also do indirect lending?
A Yes.
Q Can you explain for us, please, what the [fol. 93]difference is between the direct and the indirect lending, very briefly?
A My opinion of the direct and indirect would be a two-party and a three-party transaction. The direct would be between the bank and the customer. The indirect would be

dealt through a dealer, where we are discounting paper for a dealer, which would be a three-party transaction.

Q Can you tell us, Mr. Leupo, whether in the installment lending field you would do a greater proportion of direct or the indirect?

A The direct.

Q Is there any particular lending, Mr. Leupo, which your bank emphasizes more than any other?

A No, there isn't.

Q Do you offer trust services?

A Yes, we do.

Q Can you describe the trust services which are offered?

A Estate, executors, guardianships, also trustees.

Q Do you have a full-time trust officer at your bank?

A Yes. Excuse me. Would you clarify that, full-time–

Q Do you have a person who devotes substantially all of his time to the trust business?

A No, we don't.

[fol. 94] Q Who in your bank is in charge of trust business?

A I am.

Q Mr. Leupo, do many of your customers use several of your banking services?

A Yes, they do.

Q Why is this so?

A Because of convenience.

Q Are your customers, as opposed to non-customers, given any sort of preferential treatment when it comes to banking services?

A None.

Q The non-customer and customer, would they be treated in a similar fashion, with similar consideration?

A Yes.

THE COURT: You mean in every instance of a banking transaction? Do you mean that there are no instances whatsoever in any banking transaction where you would fail to give any preference to a customer?

THE WITNESS: Oh, no.

THE COURT: I didn't think you meant that.

* * * *

[fol. 97] Q Can you state for us, Mr. Leupo, whether, in your opinion, the services of your bank and the services of the other two banks in Phillipsburg are substantially identical.

A Yes, they are.

Q And can you state for us whether you believe that the rates at which your services are offered to the public and at which the services of the other two banks are offered to the public are substantially identical.

A I would say they were, yes.

* * * *

[fol. 99] Q How long have you been at National Bank, Mr. Leupo?

A Since February, 1958.

Q And prior to that time what was the status of your bank?

A A State-chartered bank, the State of New Jersey.

Q Were you a member of the Federal Reserve System?

A Yes.

Q What in your opinion were the advantages to you of becoming a national bank?

A Broader consideration of our assets.

THE COURT: Mr. Leupo, I am not too sure what that means. I would appreciate your telling me in a little bit more detail.

THE WITNESS: We found through experience that consideration of the position of our mortgage folio, the position of our loans on our mortgages in comparison with being risk and non-risk assets have a better consideration by the Comptroller's Department than over the State-chartered system. We feel that our assets are in such good shape that this is one point [fol. 100] of consideration for the evaluation of the bank.

THE COURT: May I interrupt you at this point, counsel?

MR. WEINBAUM: Surely.

THE COURT: How is this relevant?

MR. WEINBAUM: We wanted to show, your Honor, that a more liberal evaluation of assets might enable the bank to do the various things that it might not have been able to do as a State bank. That is all.

* * * *

[fol. 102] Q Could you describe some of the shopping areas in Phillipsburg for us, Mr. Leupo, Phillipsburg and the immediately surrounding area?

A We have a shopping center. We have a large commercial store and we have various food chain stores.

THE COURT: This is in Phillipsburg?

THE WITNESS: This is in the area.

THE COURT: When you say "in the area" how large an area are you speaking of?

THE WITNESS: The outlying townships.

THE COURT: What townships are those, Mr. Leupo?

THE WITNESS: Lopatcong, Pohatcong and Alpha Borough have these shopping areas.

Q This commercial store you mentioned, which one is that in?

A Pohatcong Township.

Q What is the name of that store?

[fol. 103] A Falk's Department Store.

Q Is there a central or downtown business district of Phillipsburg?

A Yes, there is.

Q Can you describe the bridges, Mr. Leupo, which link the City of Easton and the City of Phillipsburg?

A Well, the free bridge links downtown Easton with the downtown section of Phillipsburg.

Q And the toll bridge?

A And the toll bridge links the highway bypassing Easton with the highway circling through Phillipsburg.

Q Does the toll bridge highway circling through Phillipsburg run through the central part of town?

A No, it doesn't.

Q Can you describe —

MR. MEYNER: The central part of which town?

Q The central part of the business district of Phillipsburg, excuse me.

(Question rephrased at direction of Court.)

Q Mr. Leupo, through the toll bridge, the toll bridge road, can you state whether or not the road on the Phillipsburg side of the river runs through the central, the south Main Street business district of Phillipsburg?

A No, it doesn't.

[fol. 104] Q Where does that road lead?

A It leads through Phillipsburg to the highway.

Q Does it go into the city, into the city proper?

A No, it doesn't.

Q Mr. Leupo, in a small town such as Phillipsburg do you feel that the role of a local bank is an important one?

A Yes, I do.

Q Do you have an opinion as to whether the people in the City of Phillipsburg itself would tend to bank locally as opposed to traveling outside of town to do their banking?

* * * *

[fol. 105] THE COURT: It does seem to me that there is no dispute about the fact that the City of Phillipsburg and the Town of Easton—whatever it may be—are in such close proximity that facilities are interchangeably used by the residents of those areas. I don't think there is any dispute about that.

MR. WEINBAUM: We think there is some dispute about it.

THE COURT: Well, you suggested in your opening that you regarded the Phillipsburg and Easton area and environs as the geographic area to be considered. I thought implicit in that was the argument that close proximity of these towns to each other, the easy access from one to the other, made the facilities of either equally available to the residents of both.

MR. WEINBAUM: Your Honor, our position is that Phillipsburg itself is an appropriate market, but that for various considerations which we attempt to bring out through our witnesses—but that the Phillipsburg-Easton area because of its proximity and perhaps not because of the same circumstances [fol. 106] applicable to Phillipsburg alone as a market might also be a relevant and appropriate geographic market.

THE COURT: You are correct as far as your argument is concerned. I recall now that you did make reference to the fact that Phillipsburg could be considered alone as the relevant geographic area, but you also urged that if that narrow limitation was not placed upon the geographic area it should not go beyond Easton and its environs. Am I correct?

MR. WEINBAUM: Phillipsburg-Easton environs would be the largest appropriate market. That is correct, but we do feel, your Honor, that it is necessary to show to the extent that we are able to that Phillipsburg alone is a banking market and totally —

THE COURT: My mind will be open to your argument, but I will say to you that my tentative conclusion now is that you narrowed the geographic area to such an extent, considering the population of Phillipsburg, that it would be most difficult to reach a conclusion on any rational basis that Phillipsburg alone would be a relevant geographic area to the issues in this case, but I told you my mind is open. You may try your own case.

MR. WEINBAUM: I might only add on this question, [fol. 107] your Honor, that there is a state boundary running between the two cities and at some point during the presentation of our case that consideration will be explored.

THE COURT: I don't know how the mere fact of a State boundary would be significant. The circumstances which would cause people to cross those boundaries and the inducements to cross might be significant, but just the mere division by a State line at the moment I cannot see to be of any particular significance. Go ahead. I am sorry.

MR. WEINBAUM: That is all right.

BY MR. WEINBAUM:

Q Mr. Leupo, are you generally familiar with the areas in which your bank conducts its banking business?

A I am.

Q What would you consider to be the primary geographic area which is served by your bank?

A Phillipsburg, Lopatcong, Pohatcong and the Borough of Alpha primarily.

Q And how would you characterize the amount of business which you derive from the area that you have just described?

A Through relationships, through activities, by advertisement, and other means of relations, public relations. [fol. 108] Q What I meant, Mr. Leupo, was that in testifying that this is what you regard as the primary geographic area can you tell the Court in quantitative terms of some sort how much business you would derive from people residing within this area?

MR. MEYNER: I object on the ground that it is too general in the absence of some showing that he made the investigation.

THE COURT: I will overrule the objection, but so that there is no question about what he refers to in his answer I

suggest that you reframe the question and specify the areas, and if he can have him state the percentage of business that the bank receives from each area, if he can.

Q Mr. Leupo, can you give any estimate of the amount of your business which you derive from the City of Phillipsburg, Lopatcong Township, Pohatcong Township and the Borough of Alpha, all together collectively from these areas?

A I am not in a position to give you an answer.

Q Can you state for us, Mr. Leupo, whether the amount of business you derive from this area would be a substantial, moderate or small percentage of your total banking business?

MR. MEYNER: Objection.

[fol. 109] THE COURT: Sustained. The previous answer was he didn't know, so how can you, if you do not know, with any reasonable degree of certainty in terms of percentages, how can you then convert that lack of understanding into terms of moderate, et cetera?

MR. WEINBAUM: I think that even though a witness cannot put a percentage figure on it he could be in a position to know if it was de minimus business that he derived from the area or whether it was a substantial amount of business.

THE COURT: He has already testified that the primary business of the bank is derived from this area, so how could he come back now with a de minimus?

MR. WEINBAUM: We will go on.

THE COURT: I am sorry. Maybe I don't follow you.

MR. WEINBAUM: He has testified that this is his primary area, and we thought that he would be able to define this with a little more particularity for the Court in terms of some quantity, perhaps not in terms of percentages, but in terms of–

THE COURT: Counsel, he said he doesn't know. Am I correct?

[fol. 110] MR. WEINBAUM: He said he couldn't–I think he said he couldn't estimate a percentage. I don't know that in terms of amount he would –

THE COURT: (To witness) Counsel is not asking you for any exact figures. He is asking you for an approximation. Can you answer the question?

MR. WATERS: We would like to renew our objection to speculation. We had this very same problem once before when Mr. Weinbaum took the deposition of a bank official, Mr. Rhimer of the Girard Trust, and he had the officer speculate

to some extent on where he had his deposits, and when we got his books it turned out that he had five times as much in the outlying areas as he thought he did. I think to speculate on the basis of what he has and where he has it is a serious mistake, and we found that out.

THE COURT: I don't want him to speculate. I will instruct him not to guess or answer on the basis of conjecture or speculation. If he does not know with any reasonable degree of certainty then his answer should be "I don't know."

Mr. Leupo, to what extend do you know?

THE WITNESS: To the extent of my association of eleven years with the bank, and being associated with—being the mortgage officer and the loan officer [fol. 111] I would truly say that it is in that area we do have the majority of our business, from interviewing people and having mortgage closings and the extent of opening new accounts.

Does that answer it?

THE COURT: I think that is approximately my understanding of his previous testimony.

BY MR. WEINBAUM:

Q You regard this as the primary geographic area served by your bank?

A Yes.

Q Mr. Leupo, do you solicit business by means of advertising?

A Yes.

Q And could you tell us how you advertise, in what media, and so forth?

A In the local paper and the normal local publiciations of associations and fraternal organizations. That is the extent of it.

Q What papers do you advertise in?

A The Easton Express.

Q Any others?

A And occasionally in the Phillipsburg Free Press.

Q Do you do any personal solicitation of business?

A Now? We have in the past but at present we do not.

[fol. 112] Q As of the end of the year 1967 were you personally soliciting business?

A No.

Q Do you advertise in any other areas of Warren County?

A No.

Q Can you explain for us, Mr. Leupo, why it is that you don't choose to advertise elsewhere in Warren County?

A Well, the prime purpose would be we know the economic conditions of this area that we are doing business in, and we try to concentrate on that area. We also feel as if we are obligated to serve our own immediate customers.

THE COURT: If you don't mind, counsel, I would like to ask a question.

Tell me, Mr. Leupo, if my understanding of what you just stated is correct. I gathered from what you stated that you confine your services to the area where you say the source of your primary business is because it is within your means to service that area.

THE WITNESS: Yes.

THE COURT: And you service that area because you think it better to service the immediate area that you have the means to serve?

[fol. 113] THE WITNESS: Yes.

THE COURT: And it would follow that you do not attempt to go beyond that area because your bank does not have the means?

THE WITNESS: No. I think we would attempt to go in an outlying area. It is pretty tough to explain.

THE COURT: Perhaps I can put it this way, having a limited capacity for service –

THE WITNESS: Right.

THE COURT: Are you giving preference to the immediate areas in which your bank is located over those lying beyond?

THE WITNESS: Yes

THE COURT: Is that the answer?

THE WITNESS: Yes.

THE COURT: All right.

[fol. 114] Q Mr. Leupo, can you describe, to the best of your ability, the amount of business you derived from Hackettstown, New Jersey?

MR. MEYNER: I object on the ground that there is no point–he hasn't investigated. He hasn't gone through his files.

MR. WEINBAUM: Your Honor, this town is quite a distance away.

THE COURT: Wait. We are going to settle this quickly. Do you know with any reasonable degree of accuracy the

approximate amount of business, if any, that you did in Hackettstown?

THE WITNESS: No.

THE COURT: He doesn't know.

Q Do you believe your bank, Mr. Leupo, has any sort of substantial competitive influence in the Hackettstown area?

MR. MEYNER: Object

MR. ROACHE: Objection.

THE COURT: Sustained.

MR. WEINBAUM: Your Honor,--

THE COURT: He doesn't even know whether his bank does business in Hackettstown.

MR. WEINBAUM: Your Honor, but I think he would have an opinion as to whether he is in competition [fol. 115] with those banks up there.

THE COURT: You mean in the sense --

MR. WEINBAUM: In the sense of whether he considers them one of his principal rivals. This, I think, is important, your Honor.

THE COURT: It might be, if it weren't for the fact that he stated that his bank does not seek business beyond the limited area described. So how can you have competition within an area where you don't seek the business, and you prefer not to service it, if it came to you?

MR. WEINBAUM: We will withdraw the question, your Honor.

* * * *

[fol. 115] Q Mr. Leupo, the Court directed a question to you which, in substance, inquired whether it was because of your resources, limited resources, which kept you from soliciting business at distances from Phillipsburg. And I believe you indicated that, no, it was not. I wondered if you could explain what, if any, other factors come into your decision with regard to doing business at great distances [fol. 116] from Phillipsburg?

MR. ROACHE: Objection. I don't know what he means by great distances.

THE COURT: Overruled. I don't know-

MR. WEINBAUM: Out of town.

THE COURT: Outside of Phillipsburg?

MR. WEINBAUM: Yes, sir.

THE COURT: Anywhere outside of Phillipsburg?

MR. WEINBAUM: Yes, sir.

THE COURT: You may answer.

A I would say our present position to loan or service the area would predicate our position to do it. I would say that we would go out of the area if we had the resources to do it. I would also say that we would go out of the area if we had the resources to do it. I would also say that we would go out of the area, limited, so that the scope of the area could be watched by our bank.

Q What do you mean by that last statement?

A Well, what I am driving at, possibly, would be the point that we know whether there is a strike in our own immediate area which would reflect the repayment of our mortgages, our loans, or reflect the deposits of our bank. Where if we were out of an area that we could not continue to watch it, we would possibly feel that we would not extend loans or credit into that area, couldn't watch it.

* * * *

[fol. 119] Q How far away is Blairstown from Phillipsburg, Mr. Leupo?

A I would say approximately 25 miles.

Q Do you know whether you do any business up there?

A We have an occasional mortgage.

Q Any other business?

A No.

Q How far away is Flemington, New Jersey, approximately?

A I would say in the same area, approximately 25 miles.

Q To your knowledge, do you do any business down there?

A No, we don't.

Q How far away is Hope, New Jersey, from Phillipsburg, approximately?

A Twenty miles possibly.

Q Do you know if you have any business up in the Hope area?

[fol. 120] A Only in the mortgage field.

Q Do you know whether or not the amount of mortgage business up there would be substantial?

A No, it would not be substantial.

* * * *

[fol. 121] THE COURT: In fact, counsel, this testimony we are getting now fits into the pattern of the previous part of the witness' testimony, that his bank services Phillipsburg primarily, and that is coupled with his further testimony that the bank did not seek business outside to any extent outside Phillipsburg.

Q Mr. Leupo, do you know whether or not you derive any business from Allentown?

A Yes, we do.

Q And do you know whether or not the amount of business that you derive from Allentown would be substantial?

A Not.

Q What about Bethlehem, do you derive any business from Bethlehem?

A We do derive business from Bethlehem.

Q And would you know whether or not the business that you derive from Bethlehem would be substantial?

MR. MEYNER: I object to the word "substantial" because we don't know what it means. It is general. The man said he did business in Allentown. He says he has business in Bethlehem. If he knows what it is, all right. He has been under subpoena. He has had a chance to look it up. If he were [fol. 122] adequately prepared by counsel—but now to state it is substantial or not substantial without denoting what it is, doesn't seem to me—

THE COURT: How do I evaluate his answer, counsel, without knowing what he has in mind when he characterized the business as substantial or not substantial?

MR. WEINBAUM: I think these words have some meaning, your Honor, on whether or not a bank is dependent on a particular area for any important share of its business, and I would like to make one comment addressed to what Governor Meyner just said about preparation. It was pointed out this morning that it is a tremendous burden on all of the banks that we are calling on in this case, whether the defendants' witnesses or ours, to ascertain with any minute particularity, your Honor, the portions of business derived here or there, and it was pointed out this morning by the Governor that we are doing our best to frame some sort of a definition for the Court, and we are trying to do the best we can absent an accountant's audit which I say—

THE COURT: I can appreciate the difficulties you would have there, and it may or may not be that he doesn't care to go into percentages. However, as [fol. 123] I pointed out a moment ago I am going to have a little trouble when I get into

the matter of what he considers substantial. I don't have factual information. I know when I have to write an opinion the opinion requires me to resolve the issue of whether there is substantial evidence or not. I can't just say that in my opinion there was substantial evidence in my findings of fact. I must refer to what the evidence was which caused me to reach the conclusion that it was substantial.

What I do think is there is testimony. His testimony has significance in this respect, it appears from what he said that the bank does some business in Blairstown in the form of mortgages, also on Hope and also it seems that some business comes to the bank from Allentown, which would tend to enlarge the geographic area of the customers seeking the services of the Phillipsburg Bank.

MR. WEINBAUM: It is our contention that every place that a bank derives its customers from doesn't enlarge the geographic market. That is our very point.

THE COURT: Not in and of itself.

MR. WEINBAUM: No.

THE COURT: It must be taken together with all [fol. 124] the other factors.

MR. WEINBAUM: That is right.

THE COURT: And among others is the capacity to render the service.

MR. WEINBAUM: We do think, if the witness is able to indicate the amount of business he feels he gets from an area without putting a percentage label on it that this is helpful to the Court.

THE COURT: How could you do that without giving some approximation?

MR. WEINBAUM: I think you can give an approximation by any number of word descriptions, very little, or a lot, this type of thing. I think we have to, your Honor, look to some sort of characterization apart from percentages.

THE COURT: I am not pinning you down to percentages, but I am trying to get some evidence that I can translate into reasonable inferences, and of course the description of substantial and not substantial is a completely subjective one, and it also furnishes very little guidance to the Court in the matter of geographic area when the witness states that the preference is not to do business outside of the Phillipsburg area and that it is not sought there.

[fol. 125] If the bank does not seek the business it cannot then be said from that that the business is not available for a bank rendering services.

You are at liberty to disagree with me. You are at liberty at all times to disagree with me.

MR. WEINBAUM: Yes, sir. I will.

THE COURT: And state your reasons.

MR. WEINBAUM: All right.

THE COURT: But all I am trying to do is give you the benefit of my tentative thinking as I go along, emphasizing my mind will remain open in this case right to the conclusion of the case and until I have reviewed it thoroughly and reached the point of writing an opinion. Don't take any statement I make here as final.

* * * *

[fol. 128] Q Mr. Leupo, can you state for us which commercial bank you consider to be your principal competition?

* * * *

THE WITNESS: I consider the Phillipsburg National Bank and Trust Company, the Second National Bank, direct competition.

* * * *

[fol. 129] Q Mr. Leupo, which bank in Phillipsburg was the first bank to extend banking hours?

A The Phillipsburg Trust Company, National Association.

* * * *

THE COURT: What were your normal hours before [fol. 130] you went to the extended banking hours?

THE WITNESS: Normal hours, 9:30 to 3:00, and we extended it from 9:00 o'clock to 3:00. The normal hours were 9:30 to 3:00, and we have extended them into 5:00 p.m. to 8:00 p.m.

Q Every night?

A Just on Friday night.

Q Why did you do this?

A To serve the public.

* * * *

[fol. 133] Q Mr. Leupo, how would you describe the competition which exists between the defendants and your bank?

* * * *

[fol. 134] A I would say it was healthy competition, healthy competition to the extent that we have grown, that we have been recognized and we have progressed. I would say it was healthy competition.

THE COURT: When you define it as healthy competition, do I understand correctly that you consider this competition as a factor in your own growth?

THE WITNESS: Yes.

* * * *

[fol. 135] Q Mr. Leupo, what is the lending limit of your bank?

A The present lending limit or are you referring to the end of the year?

Q The end of the year 1967.

A About sixty-nine thousand.

Q And on what basis do you compute your lending limit?

A On the basis of capital surplus and undivided profits.

Q Mr. Leupo, have you found your lending limit to be adequate with respect to the needs of your customers or prospective customers?

A Yes.

Q Can you recall any instances where because of your lending limit you have been forced to turn a customer or a prospective customer away?

A I can only recall one instance where it was necessary to participate—I will retract that. In my time, I can only recall one instance where it was necessary to participate to satisfy the customer.

Q And by "participate", will you explain what you mean?

A Well, due to our loaning limitation in order to [fol. 136] satisfy the customer we had to have assistance for the additional funds that were necessary.

Q And where do you turn for such assistance?

A In this particular case we turned to the Phillipsburg National Bank & Trust Company.

Q Do you ever have occasion to turn to other banks for participation?

A Phillipsburg Trust Company has turned to their correspondent bank in prior cases, yes.

Q And who is your correspondent bank

A National Newark & Essex Banking Company.

Q Does a participation work a particular hardship on your bank?

A No, it doesn't.

* * * *

[fol. 140] MR. WEINBAUM: Your Honor, I would like to ask Mr. Leupo why his commercial and industrial loans are 9.5 per cent of his total loan portfolio.

THE WITNESS: Because this would represent our request for commercial loans.

* * * *

[fol. 143] Q Are any of these customers--are any of these people customers of your bank in any respect?

A Yes, we have a relation with the Phillipsburg National Bank in a participation loan with Shahmoon Industries.

Q Do you have any experience or knowledge, Mr. Leupo, based on your background as a banker, with respect to the credit sources available to larger companies generally?

A I have no knowledge on that.

Q Excuse me?

A I have no knowledge of that.

Q Mr. Leupo, turning to Government Exhibit 39, I wonder if you could explain, or how you would account for the fact that 69.1 per cent of your loan--I am sorry, this is Government Exhibit 43--69.1 per cent of your loan [fol. 144] portfolio as of year-end '67 was in real estate loans?

A Demand, possibly the demand. That's the only answer I could give.

[fol. 145] Q And do real estate loans constitute the largest category of loans which your bank has in its portfolio?

A Yes.

Q Turning to Government Exhibit 39, Mr. Leupo, which sets forth the deposit ratios of the banks in Phillipsburg and the Phillipsburg-Easton area, it is indicated that your time and savings deposits are approximately 71.6 per cent of your total deposits for the year ended 1967. How do you account for

the fact that your time and savings deposit percentage is that amount?

A I would account for it by saying that this is a convenient savings investment for people in our area, convenient to the extent that it can be withdrawn under the contract, the savings agreement. It is convenient.

Q Mr. Leupo, if there were a shift in demand in the community—you have indicated there has been a demand for certain types of things that your bank offers. If there were a shift in demand for instance in type of loans that you believe the community desired, in your opinion could your bank accommodate such shift in demand?

A Yes.

Q Has your bank been prospering?

A Yes.

Q Have you paid a regular dividend?

A We have been paying a stock dividend prior to this [fol. 146] year. This year we are paying a cash dividend.

MR. MEYNER: If your Honor please, I don't think the answer was responsive. A regular dividend means over a period of years.

THE COURT: What about that, counsel?

Q For how long have you been paying dividends, either cash or stock, Mr. Leupo?

A The history of the bank I cannot answer, but the history of my association with the bank from '57 to '64, there was a cash dividend. Then we went into the stock dividend, and now we are giving consideration to possibly both.

* * * *

[fol. 152] Q Mr. Leupo, yesterday during your testimony we asked you on page 121 of the transcript, "Do you know whether or not you derive any business from Allentown?" and you indicated "Yes, we do." Mr. Leupo, do you know what type or types of business you derive from Allentown?

A Mortgage business.

Q Will you approximate for the Court the number of mortgages that you derive from Allentown.

A We have three mortgages.

Q And can you approximate the dollar amount of these three mortgages?

A No, I can't.

Q Can you state how these mortgages were obtained?

A These three mortgages in particular were obtained by customers of the bank that moved into the Allentown area.

Q To the best of your knowledge, do you derive any other types of business from Allentown?

A The only other type would be the common savings or checking accounts that these customers are associated with.

Q Which customers?

A The mortgage customers.

Q Mr. Leupo, yesterday you indicated also at [fol. 153] page 121 of the transcript in response to a question, "Do you derive any business from Bethlehem?", you indicated we do derive business from Bethlehem. Can you, if you know, tell us what type or types of business you derive from Bethlehem.

MR. MEYNER: I object to the question. I think it is proper to ask if he knows, to ask if he knows first.

MR. WEINBAUM: I have asked that.

THE COURT: Do you know what type of business you service from Bethlehem?

THE WITNESS: Yes.

THE COURT: Go ahead. Answer the question.

Q Will you please tell us what type of business you derive from Bethlehem, Mr. Leupo.

A I do know we derive mortgage business from Bethlehem.

Q Do you know approximately the number of mortgages you derive from Bethlehem?

A Approximately five mortgages.

Q Do you know the circumstances by which you obtained or granted these mortgages in Bethlehem?

A Yes. On closing mortgages I know of them. I have control of the mortgage funds.

Q Mr. Leupo, do you know if you do any other types of business in Bethlehem in addition to the mortgage [fol. 154] business?

A Only in the association that these people who have mortgages with us have checking accounts.

Q Mr. Leupo, do you do any business in Bucks County, Pennsylvania?

A We have one mortgage in Bucks County.

* * * *

[fol. 156] Q Can you approximate how much mortgage business you derive from the Easton area?

A Approximately 150 mortgages.

Q How many total mortgages are on your books, approximately?

A 550.

* * * *

[fol. 157] Q Do you do any business, Mr. Leupo, in Washington, New Jersey?

A Yes, we do.

Q Can you tell us what type of business you do in Washington?

A We have mortgage business, we have checking accounts and savings accounts.

Q How far is Washington from Phillipsburg?

MR. MEYNER: It is conceded that it is twelve miles. It is in the record.

MR. WEINBAUM: I don't know that the record does show it, your Honor.

A Approximately twelve, fifteen miles.

Q Can you approximate for us, Mr. Leupo, the amount of your total mortgage business that you have in Washington, that is, the number of mortgages you would have in Washington?

[fol. 158] A Approximately ten.

Q And can you approximate the dollar amount of mortgage business you have there?

A No, I can't.

Q Can you tell us approximately how many demand deposit accounts you have in Washington?

A No, I can't.

Q Can you approximate the total number of savings accounts you have in Washington?

A No, I can't.

Q Do you do any business in Belvedere?

A Yes.

Q And approximately how far is Belvedere from Phillipsburg?

A Say, ten to fifteen miles.

Q Can you tell us what type or types of business you do in Belvedere?

A Mortgage business, checking accounts and savings accounts.

Q Can you approximate for us how much mortgage business you do in Belvedere?

A Yes, we have three mortgages in Belvedere.

Q Is this mortgage business which your bank originated?

A Yes.

Q Can you tell us the circumstances of obtaining these mortgages?

[fol. 159] A Yes. We also have a director in Washington—from Washington, New Jersey, which is in business, and the entrance of those mortgages was through our director.

Q What other types of business did you say you got from Belvedere?

A We have mortgage business, and checking accounts and savings accounts.

Q And can you give us any idea of the number of checking accounts you have in Belvedere?

A No, I can't.

Q Can you give us any idea of the number of savings accounts?

A No, I can't.

Q Do you know who any of your checking or savings accounts customers are up there?

A Well, we do have the County Freeholders, which originates out of the Belvedere area. This is the only one I could give you a definite description of.

Q Is that a checking account or savings account?

A Savings account.

Q Do you do any commercial and industrial lending to your knowledge in Washington or Belvedere?

A Yes.

Q Do you do any commercial and industrial lending in Washington?

[fol. 160] A In Washington, yes.

Q Do you do any in Belvedere?

A No.

Q Can you tell us approximately how many commercial and industrial loans you have in Washington?

A Just one, to my knowledge.

* * * *

[fol. 161] CROSS-EXAMINATION

BY MR. MEYNER:

* * * *

[fol. 162] Q Do you know why the Phillipsburg Trust Company moved their main office from South Main Street to the Memorial Parkway?

A Yes, for a more desirable location.

Q And isn't it true that the South Main Street section where Phillipsburg Trust Company and the Second National Bank and the Phillipsburg National Bank have their main offices is a deteriorating section of Phillipsburg?

A Deteriorating and a congested area for the bank to service, yes.

Q And there is a change in the general tenor of business in that area too, is there not?

A Yes, sir.

Q And most of the business—a great deal of the business that was formally on South Main Street has now gone out to where your bank's main office is located.

A You are referring to the banking business or [fol. 163] commercial business?

Q I'm talking about business generally.

A I would say yes. Yes it has.

Q The Motor Club moved out.

A Yes.

Q The supermarkets moved out there.

A Yes.

Q The Hillcrest Shopping Center is out there, the liquor store is out there, the restaurants are out there, the automobile companies are out there.

A I answered yes.

Q So that there has been a movement away from the downtown section of Phillipsburg and it has moved out to Route 22 or Memorial Parkway, hasn't it?

A Yes.

Q And your directors decided you would move with the trend.

A Yes, sir.

Q Has it been a satisfactory move?

A It certainly has.

Q How long has Mr. Mamana been connected with your bank?

A I can't give you an exact year.
Q Roughly, five, ten, fifteen years?
A Fifteen years.
[fol. 164] Q And where does he live?
A He lives in Easton.
Q And he is an Easton broker?
A Yes.
Q And he was an officer of your company at one time, was he not?
A Yes, sir.
Q He had offices in your main bank, both when it was downtown and now at the Memorial Parkway.
A He had offices in our bank? Not to my knowledge.
Q He had a desk, or he spent a good deal of time in the bank.
A Yes.
Q And he was a producer of considerable business for the bank, was he not?
A Yes, sir.
Q And he was going into the Easton-Bethlehem Township, Bethlehem area.
A Yes, sir.
Q And he did get you business from that area.
A He did.
Q Now you have a Washington director, do you not?
A Yes.
Q And is he getting you some business from that area?
[fol. 165] A He is.
Q Have you had a chance to thumb through your checking accounts and your savings accounts in preparation for this trial?
A No.
Q Have you been able to go through the mortgage records in preparation for the trial?
A Yes, sir.
Q And have you had a chance to talk with your tellers and your people in the bank?
A In reference to this?
Q Yes.
A No, I have not.
Q Have you discussed this with your directors?
A Yes.

Q And on the basis of preparing yourself for the trial and on the basis of looking over the mortgage records and on the basis of your knowledge of the areas in which you do business, what would you say is the area in which this bank does business?

A I would say a radius of 25 miles at this time.

* * * *

[fol. 169] Q You have had a number of withdrawals from your bank, either a time or a – a withdrawal from time or demand deposits in favor of the Regelsville branch of the Girard Trust?

A Yes.

Q And wasn't there quite a drive on their part to get deposits from your area?

[fol. 170] A Yes, sir.

Q And you saw withdrawals from your bank?

A I saw withdrawals and I have acknowledged their advertising, yes.

Q They did advertise extensively?

A Yes, sir.

Q Which of the two advertising media do you use more often? I believe you said the local Phillipsburg paper which comes out weekly and the Easton Express.

A The Easton Express.

Q Which is a daily?

A Yes.

Q And which covers pretty much this twenty-five-mile area you described?

A Yes.

Q When you answered the plaintiff's attorney about the area he described–Phillipsburg and a few municipalities, Easton and a few municipalities–you said that the majority of your business came from there, did you not?

A Yes, to my knowledge.

Q And by "majority" you mean in excess of fifty percent?

A Yes.

Q And you are not willing to specify any more than in excess of fifty-one percent?

[fol. 171] A I am not in a position to.

Q Do you know that two directors of your bank, one a director and vice-president, and another a director, have been borrowing regularly over the years at the Phillipsburg National Bank & Trust Company?

A I know that they have borrowed. I have no knowledge whether it's regular or irregular. I know that they have borrowed.

Q If you knew that they borrowed in excess of what you said was your limit, would this alter your statement that there wasn't much demand for commercial and industrial loans?

A May I hear that again, please?

THE COURT: Read it back.

(Question read.)

A I would have to say yes.

* * * *

Q Isn't it true that you went from a State bank to a national bank because you felt that the requirements of capital and surplus were less with the national banking outfit than the State banking outfit?

A That is one of the reasons, yes.

[fol. 172] Q And isn't it true that over the years you have tried to avoid paying cash dividends so that you could build up your capital structure?

A Yes, sir.

Q On direct examination you indicated that there was practically little difference in the amount you paid on deposits and the amount of interest you got on loans, is that not correct?

A I don't recall that.

Q Is there very much difference between the rate–is there any difference on the rate paid on a time deposit as between your bank and the two banks involved in this litigation?

A There isn't any difference.

Q Is there any substantial difference in the mortgage loan rate?

A Not to my knowledge, there is no difference.

Q Is there any real difference in commercial and industrial loan rates?

A Not to my knowledge, there isn't.

Q So with respect to this area there is little direct competition?

MR. WEINBAUM: We object, your Honor.

THE COURT: Overruled.

A In regard to the rate area, no.

[fol. 173] Q We are talking about time deposits, mortgage loans, and commercial and industrial loans; little or no competition?

A Right.

Q You are familiar with the bridges between Easton and Phillipsburg?

A Yes, sir.

Q There are two of them?

A Yes, sir.

Q One a free bridge and one a toll bridge?

A Yes, sir.

Q And there is an excessive amount of traffic on both, is there not?

A There is.

Q And even the toll bridge has an advantageous rate for the local people?

A It does.

Q Two and a half cents a ride if you buy a book for a dollar?

A Yes.

Q And where would you say the shopping areas are now moving? At one time they were Easton downtown and some of Phillipsburg downtown. Where are the shopping areas now?

A I would say that the shopping areas are in the outlying [fol. 174] areas of both vicinities.

Q And the Lopatcong branch of the Phillipsburg National, and the outer edge of Phillipsburg of the Second National branch, are the areas where that kind of business has been moving, is that not correct?

A Yes, sir.

Q You have a director by the name of Falk, a vice-president?

A Yes, sir.

* * * *

Q Is it true that the labor population is quite mobile, that is, that they move greater distances as years go on?

A Yes.

Q Do you have customers who work at the Riegel [fol. 175] Paper Company in Milford?

A Yes, we do.

Q Do you have customers who work at the American Can Company in Washington?

A Yes, we do.

Q Do you have some who work at Celanese in Belvedere?

A This I don't know.

Q Do you have some that work at Bethlehem Steel?

A Yes, we do.

Q Your stockholders are limited, are they not, the stockholders of your corporation are limited?

A In number, or what?

Q Yes, in number.

A Yes.

Q And one stockholder controls in excess of fifty-one percent, does he not?

A Yes, he does.

* * * *

[fol. 176] CROSS-EXAMINATION

BY MR. ROACHE:

* * * *

[fol. 180] Q Do you give loans to college students?

A Yes, sir.

Q You give not many loans? Do you know the number approximately?

A We have given out about forty. We have approximately forty loans.

* * * *

[fol. 181] Q When you advertise in the Express, do you not try to find out where it is circulated?

A I know where it is circulated, in the Phillipsburg and Easton area.

* * * *

[fol. 182] CROSS-EXAMINATION

BY MR. MEYNER:

Q Isn't it true that of those industrial and commercial loans we were talking about, a number of them were participation with the Phillipsburg National Bank & Trust Company and the Second National Bank?

A Yes, sir.

Q And it was business you were requested to participate in because it affected the local community?

A Yes.

Q Something like People's Water or Pohatcong sewer job?

A Yes.

Q And isn't it true that your management presently has the policy of let's not encourage any trust business?

A Yes sir.

* * * *

REDIRECT EXAMINATION

[fol. 182]BY MR. WEINBAUM

* * * *

[fol. 183] Q You indicated in response to a question on cross-examination that you considered—made reference to a radius of 25 miles.

A Yes.

Q And this was the basis for what?

[fol. 184] A This was our area, our immediate area that we were interested in under the present circumstances, the situation, the economy.

Q And how do you arrive at this 25 mile figure, Mr. Leupo, in determining that this is your area?

MR. MEYNER: If your Honor please, I asked this witness to base it on having reviewed his mortgages and having reviewed his deposits and his general knowledge, and he gave the answer on that basis.

THE COURT: I will overrule the objection. I will see what he says.

(Question read back at direction of Court.)

A We arrived at that area because this is the designated area of service projected by my Board, and which they are immediately interested in.

THE COURT: I take it your present policy is not to service beyond that area.

THE WITNESS: Your Honor, this is the present policy. We would not if the circumstances provided—we would give consideration, but the present policy is to service that area.

THE COURT: Is that policy dictated by lack of capacity to service beyond that area?

THE WITNESS: No. That policy is dictated for [fol. 185] the purpose of the knowledge of that area, a 25 mile radius. To explain myself, we know what industry is doing in that area, whether cutting back or laying off or possibly having strikes. We know what the point of risk may be. We know what the economy is in that area, and if we extend it beyond that area then we have to make provisions for a wider scope.

THE COURT: And planning for a wider scope, any planning for a wider scope, as I understand it, was not adopted.

THE WITNESS: It was never adopted.

Q I would like to pursue this a bit further, Mr. Leupo. You have indicated you do not solicit throughout this 25-mile area.

A Only through the medium of advertisements in the local paper.

Q Do you know whether or not your advertising reaches the—saturates the Lehigh County area?

A I don't know it for a fact, but I assume it would. It has a large circulation.

Q Do you anticipate, Mr. Leupo, at some time more actively soliciting business in this 25-mile radius, personally soliciting business, than you do now?

MR. MEYNER: I object. That was not the question.

[fol. 186] THE COURT: The difficulty I find with the question is it seeks an opinion from him as to what his anticipation is. I presume the bank is operated by a Board of Directors and in the absence of any policy or planning I don't know what value the answer would have.

MR. WEINBAUM: He is on the Board.

THE COURT: That is all right. If there is any planning for more activity in the area I will permit it, but when you ask

whether he anticipates I don't know how much value the answer would have.

Q Is there any plan, Mr. Leupo, made to more actively solicit business within this 25-mile radius?

A The only plan that is being considered would be upon the growth of the bank the bank would be in a position to reach out into a greater area.

THE COURT: Mr. Leupo, I developed the thought on the basis of your testimony yesterday that you don't—that the bank had all the business that it could handle. Now if I am incorrect on that—

THE WITNESS: At this time.

THE COURT: At this time.

THE WITNESS: Yes.

THE COURT: Has the bank engaged in any planning of any nature whatsoever to improve its financial [fol. 187] condition so that it could service to a greater extent within the Phillipsburg-Easton area and environs and beyond that?

Maybe I'll put it in a simpler form. As far as the present policy is concerned, are you satisfied with the situation that presently exists?

THE WITNESS: That presently exists, yes.

THE COURT: And there is no indication at the present time upon the part of management of the bank to change that situation.

THE WITNESS: No, there is not.

Q By your answer that you have all the business you can handle, are you interested in developing business further?

A Of course, yes. The answer is yes.

Q Can you state whether or not in your opinion the financial resources of your bank are adequate to grow further?

A My Board feels as if they are, yes.

Q Do you feel that the area is growing?

A I do.

Q Do you feel that—can you state whether you feel that a small bank such as yours will or will not be able to share in such growth?

Mr. MEYNER: I object, your Honor.

[fol. 188] THE COURT: Overruled.

A I feel as if they can share, yes.

* * * *

[fol. 192] Q Mr. Leupo, did you base your answer concerning the 25-mile radius, called your area, on the fact that you, as testified earlier, you derived certain business from Allentown, certain business from Bethlehem, certain business from Washington, certain business from Belvedere?

A Did I derive my opinion from my existing business?

Q Yes.

A No. I didn't derive my opinion from that. I derived it from the opinion that we know this 25-mile radius and we have had experience in there, and in order to be acquainted with it—it was a compromise.

[fol. 193] Q Mr. Leupo, can you explain for us why your board has said, "Let's not encourage trust business"?

A Well, I think one of the prime factors is the existing trust business we have today, and the return of profit from what we have. And in order to encourage it, we would have to elevate our Trust Department and go to a larger expense, which we are trying to curtail at this point. I think this is the prime part of it. Our Trust Department today is servicing possibly the desires of our immediate customers. We have not gone outside and solicited trust business.

Q At some point do you believe that the board would consider hiring a trust officer?

MR. ROACHE: Objection.

THE COURT: Sustained.

Q In your opinion, Mr. Leupo, if it is shown to your satisfaction that there is a demand for trust business in the area, do you think that you would give consideration to hiring a trust officer?

A When you say me, you are referring to the board, am I correct?

MR. WEINBAUM: Yes.

MR. MEYNER: I object.

MR. WEINBAUM: He is a member of the board.

THE COURT: It is a hypothetical question. You are asking him to assume something.

[fol. 194] All right. I think you have covered it, but I am not going to restrict you.

MR. WEINBAUM: We will withdraw the question.

THE COURT: Would you state again, Mr. Leupo, what reasons, if any, there are, of your own personal knowledge, why your bank does not want to expand its activities in trusts?

THE WITNESS: The most obvious reason at this time is that we do not have a Trust Department to the extent of advertising for additional business. Our Trust Department today is in a position to handle the trust work that we have.

THE COURT: Then am I correct in my assumption that the reason for not expanding is the lack of facilities available rather than the absence of availability of trust accounts?

THE WITNESS: Correct. Yes, I would say, to this extent, that we have not had requests for a sizeable or large trust work that would necessitate increasing our trust department.

THE COURT: I don't know whether you understood my question. I gathered from your testimony a moment ago—and please do not hesitate to correct me if my recollection is faulty—I gathered from your testimony a moment ago that the trust services you [fol. 195] render were considered as in the nature of an accommodation to customers rather than as business for the bank.

THE WITNESS: Presently, yes.

THE COURT: Is that true?

THE WITNESS: True.

THE COURT: I think counsel was trying to find out what you might do in the future. And I pose this question: Is it true that the present policy of the bank is not to set up a Trust Department, because it does not desire to handle trust accounts that may be available within the area that you service, except as an accommodation for customers?

THE WITNESS: Correct.

THE COURT: Is that correct?

THE WITNESS: That is correct, at this point.

MR. WEINBAUM: One further clarification, your Honor.

Q Mr. Leupo, has your bank had requests for trust services which you haven't been able to accommodate?

A No.

MR. WEINBAUM: We have no further questions, your Honor.

RECROSS EXAMINATION

BY MR. MEYNER:

Q It is the present policy of your bank to do business

within a twenty-five-mile radius of your bank?

[fol. 196] A Yes, sir.

* * * *

[fol. 197] EARLE J. LEWIS, sworn.

DIRECT EXAMINATION

BY MR. WEINBAUM:

Q Mr. Lewis, will you please state your address and occupation?

A My home address?

Q Yes.

A 119 Mine Hill Road, Hackettstown, New Jersey. And I am with the bank, Peoples National Bank of Hackettstown, Hackettstown, New Jersey.

Q And what is your capacity at the bank?

A I am executive vice-president and cashier.

Q Where is Hackettstown located, Mr. Lewis, in relation to Phillipsburg, New Jersey?

A Hackettstown is twenty-three miles east on Route 24 and 46, on the edge of—the eastern section of Warren County and the western section, you might as well say, of Morris County, on the boundary line.

* * * *

[fol. 199]Q Can you briefly describe the various services offered by your bank, please?

A We have a full service bank. We have mortgages, a trust department, commercial accounts, savings, travelers' checks, business loans, consumer credit department, safe deposit boxes.

* * * *

Q And can you tell us what rate you pay on your passbook savings?

[fol. 200] A Four percent.

Q How long have you been paying four percent, approximately?

A I think on the first of January of 1964. I am not sure of that. I believe it was 1964.

Q Do you do any tuition financing?

A Very little. We do a little, but very little.

* * * *

Q Mr. Lewis, for purposes of this case, the government has defined Phillipsburg and the environs to include the City of Phillipsburg, Pohatcong, Lopatcong, and Greenwich Township, and Alpha Burough. To the best of your knowledge, Mr. Lewis, does your bank do any demand deposit business in the Phillipsburg and environs area?

A Yes.

Q Do you know approximately how many accounts of this type you have in this area?

A No.

Q Do you know anything about the demand deposit business which you do in this area, if you do any?

MR. MEYNER: Objection. He already said he doesn't know.

[fol. 201] MR. ROACHE: Objection.

MR. WEINBAUM: Do you know anything at all? I asked him about the number, your Honor.

THE COURT: Read the question.

(Question read.)

THE COURT: He just said–

MR. WEINBAUM: The question before that.

A We do have accounts here.

* * * *

THE WITNESS: I believe the primary section of Phillipsburg would be–let's say around six miles, according to the chart which they have established.

MR. WEINBAUM: Your Honor, we–

THE COURT: Wait a minute. Let the witness finish. I don't think he has finished.

THE WITNESS: And in this particular section [fol. 202] of–our activity in this section, including our loans, including our mortgages, including commercial savings, I would

definitely say that we have less than one percent of our total number of accounts. And our total number of accounts approximately is 15,000–Christmas Club, loans, commercial accounts and savings accounts. We have a very small portion in this section.

Q Fifteen thousand dollars?

A Fifteen thousand accounts.

Q Is this your total number of accounts of all categories?

A Yes.

Q I would like to pursue further some of the various kinds of business, Mr. Lewis?

A Right.

Q To the best of your knowledge, does your bank have any loans from Phillipsburg and the environs?

A Yes.

Q Can you tell us what types of loans?

A We have one mortgage in this section. We have a few consumer credit loans in this section.

Q Do you have any commercial and industrial loans in this section?

A Not industrial loans, no.

Q Commercial loans?

A No.

[fol. 203] Q Do you have any dealers in this Phillipsburg and environs area?

A No, no we don't.

Q Do you advertise, Mr. Lewis?

A We do advertise, yes.

Q Where do you advertise, what mediums do you advertise in?

A We use the Hackettstown Gazette. Once in a while Washington Star. They are our main sources of advertising plus billboards.

Q You advertise on the radio?

A We have advertised on the radio. We are not now advertising on the radio.

Q What radio station or stations have you advertised on?

A One out of Washington, New Jersey.

Q Mr. Lewis, turning for a moment to Easton, we have defined the Easton area to encompass the City of Easton, the Townships of Forks, Williams and Palmer and the Boroughs of Wilson, West Easton, Glendon, Stockertown and Tatamay. I

would like to ask you whether to the best of your knowledge your bank does any business in that area.

A This would be the Easton area?

Q Yes, as we have defined it.

A To my knowledge, no. We may have—which all banks [fol. 204] do, a few scattered accounts, a very few.

Q Would this apply to the various types of business your bank does?

A Yes it would

* * * *

[fol. 206] Q Getting back to Allentown, Mr. Lewis, can you state for us to the best of your knowledge whether you do any business in Allentown?

A No.

Q Mr. Lewis, approximately how far is Washington, New Jersey, from Hackettstown?

A Twelve miles.

Q Can you state whether or not your bank does any business in Washington?

A Some, yes.

Q Can you tell us what types of business you do there?

A We have savings, commercial, Christmas clubs, mortgages.

Q Do you know approximately how many savings accounts you would have in Washington?

A No.

Q How many Christmas clubs?

A No.

Q Do you have any idea of how many commercial loans you would have there?

[fol. 207] A No, I don't.

Q Do you know who your commercial accounts are in Washington?

A Not offhand.

Q Can you tell us approximately how many mortgages you have in Washington?

A Very few, very few.

Q Would you know the approximate dollar amount of such mortgages?

A No, I wouldn't.

Q Mr. Lewis, to the best of your knowledge, does your bank do any business in Bloomsbury, New Jersey?

A Not to my knowledge.

Q To the best of your knowledge, does your bank do any business in Milford, New Jersey?

A Not to my knowledge.

Q To the best of your knowledge, does your bank do any business in Flemington, New Jersey?

A Not to my knowledge.

Q To the best of your knowledge, does your bank do any business in Regelsville, Pennsylvania?

A No.

Q To the best of your knowledge, does your bank do any business in Nazareth, Pennsylvania?

A No.

[fol. 208] Q To the best of your knowledge, does your bank do any business in Bangor, Pennsylvania?

A No.

Q To the best of your knowledge, does your bank do any business in Slatington, Pennsylvania?

A No.

Q To the best of your knowledge, does your bank do any business in Coopersburg, Pennsylvania?

A No.

Q How about New Tripoli, Pennsylvania?

A No.

Q To the best of your knowledge, do you do any business up in Blairstown, New Jersey?

A Yes.

Q Can you tell us what kind of business you do up there, if you know.

A Savings, commercial, mortgages.

Q Do you know how many mortgages you have up in Blairstown?

A I couldn't say without a survey, no.

Q Do you say commercial and industrial loans up there?

A No, no.

Q Do you know how many savings accounts you have in Blairstown?

A No, I wouldn't.

[fol. 209] Q Do you know how many mortgages up there?

A No, I don't know.

Q Do you know any of your mortgage customers up there?

A Personally?

Q Do you know who any of them are?

A Not without taking a survey, no.

Q Now, do you do any business in Belvedere?

A We may have a few savings accounts and checking accounts, but very little.

Q Do you have any lending activity in Belvedere, to your knowledge?

A Not to my knowledge now. There may be consumer credit loans over there. We go out quite a distance.

* * * *

[fol. 211] CROSS-EXAMINATION

BY MR. MEYNER:

* * * *

[fol. 212] Q Have you made any detailed study of your mortgages? Have you gone through a list of your mortgages prior to your coming here?

A No, not just prior to coming here.

Q In preparation for your answers, have you gone through your list of mortgages?

A No.

Q Have you gone through a list of your demand and time deposits?

A No. I didn't take a fine survey, no.

Q Did you go through your automobile loans?

A Not before I came in here, not recently.

Q You have better than a million dollars in automobile loans, do you not?

A In automobile loans alone we have a million dollars, yes.

Q On installment credit you have about 400,000?

A On installment credit on total we have the best part of two million. That includes all our installment paper of all sorts.

[fol. 213] Q You have concentrated in this area? You have made an endeavor to build up your installment loans?

A Oh yes, yes.

Q And you have never determined to go beyond a few miles from Hackettstown?

A We are seeking new business.

Q Have you gone to Washington and sent a man out there trying to get new business?

A We have not recently, no.

Q Have you sent anybody to Phillipsburg or Easton?

A No, we have not recently, no.

Q Isn't it true that many of your customers for installment loans do go to Phillipsburg or Easton or Bethlehem and Allentown and then come back and want to borrow so they can purchase an automobile or some appliance?

* * * *

[fol. 214] THE WITNESS: This happens. There are a few cases of this, yes.

* * * *

Q And Hackettstown presently has a growth development that is shared in by all of Warren County, all of the Lehigh Valley area, isn't that so—well let's say all of Warren County.

A Yes, yes.

Q In other words, the people are moving out [fol. 215] towards the Delaware.

A Yes, yes.

Q That is the only area they can grow to.

A Yes.

Q And isn't it true that just across the river, across the Musconetcong on the road to Phillipsburg a new plant is being established?

A Yes.

Q What is the name of the plant?

A I can't tell you. I am sorry.

Q Was it U.S. Radium?

A I am not sure. I think it is. I'm not sure.

Q And it is a prospective substantial employer.

A Yes, yes, definitely.

Q And you have seen industry in Hackettstown grow?

A Yes.

Q And
Township?
A Yes.
Q What
A Yes. is a development out in Mansfield
Q So as
Washington,
homes. ıce farms are now becoming populated.
A Yes.
[fol. 216] travel Route 24 from Phillipsburg to
Washington of the farm space is now being occupied by
A Yes.
Q Would
institution h nd the same is true from Phillipsburg—from
A No, it ipsburg, is it not?
Q That
number of n prise you to know that an Easton financial
A That mortgages in Hackettstown?
Q That not surprise me.
mortgages i d Savings from Newark have a substantial
institutions es in your town?
your knowle surprise me.
A Very ıston institution has as many as three
Q And field? Do you find that savings and loan
area?
A Newa the mortgage field in Warren County, to
Q They
loans. o.
A Yes, nstitutions are from as far away as what
Q Insur
A I don in New York City.
Q But y ning out there and putting out mortgage
A Yes.
Q And y.
savings ban panies too?
A Yes. about that.
Q And now the savings and loans.
Hackettsto
A Yes. ings institutions, that is the [fol. 217]
Q Your
in what the
in the sense them from Easton are moving towards

s never chosen to try to develop business
describes as the Phillipsburg-Easton area,
send people there to try to get business?

A I can answer no and I can answer yes, so I will leave it unanswered.

* * * *

[fol. 218] Q Well, to your knowledge, have you ever sent a person from your bank to Easton or Phillipsburg to try to get–

A Not in Pennsylvania. It wouldn't be in Pennsylvania, definitely.

Q There is a great growth of industrial enterprises in the Warren County area–Celanese, and Hoffman-LaRoche in Belvedere, and M. & M. Candy Company is increasing its employment in its new plant that is to be located on the Musconetcong, American Can in Washington–many of those large corporations have moved in. Have you found from some of the manufacturing outfits that they are desirous of giving you trust business with reference to pension funds or pension plans?

A Yes.

Q Would you say there is a need to service this in the Warren County area generally?

A Yes, I would.

Q There is a potential for that kind of business?

A Yes, there is.

Q And would you say that there is a real need to develop trust business in that entire area?

A Yes.

Q And is there competition for this business from outside areas?

[fol. 219] A I would say yes. I would say yes.

* * * *

[fol. 221] Q There are people in the area where you are doing business who are seeking the dollar that is being saved, are there not?

A Yes.

Q Who are they? Are they savings institutions?

A I am going to make this statement. Maybe it isn't the right thing. We have in our section strong competition to the east of us. We have it. And we have had it for a long while. There are savings and loans and there are savings banks.

Howard Savings is one, Morris County Savings is one. Morris County Savings is a very, very strong competitor of the Peoples National Bank and the Hackettstown National in that section.

Q Trying to get the savings dollar?

A Yes.

Q How about mutual funds?

A Mutual funds, that is another source that takes money out of our banks.

Q And how about insurance companies?

A To a certain extent, yes. I wouldn't say insurance as much as I would the other items.

Q How about credit unions?

A I can't disagree with you.

Q How about the stock market?

A Well, I think that is a national thing all through the [fol. 222] country. It does take some out, there is no question about it.

Q You see it in your bank, don't you?

A That's right.

Q And you see it on the extension of credit side, too, other people that are seeking to make loans?

A Yes, true.

Q Especially in the automobile loans which are rather heavy. There are financing companies working out arrangements with dealers, are there not?

A There could be. This I don't know. I couldn't answer.

Q Did you ever hear of the General Motors Acceptance Corporation?

A Oh, yes.

Q Have you ever encountered them?

A I have.

Q Aren't they competition?

A They are.

CROSS-EXAMINATION

BY MR. ROACHE:

* * * *

[fol. 223] Q Why do people travel distances to come into Hackettstown to buy automobiles?

[fol. 224] A I think to answer that—I think you will find that throughout the nation. I don't think it is only Hackettstown. I think it is Easton, Phillipsburg, every place. They will shop for cars.

Q They go all through the community, Easton, Allentown, Phillipsburg?

A Whether it is New York or Los Angeles, people like to shop. Where they get the best deal, this is it. I think this is just an ordinary thing that we have in our economy of our country here today.

Q And in the purchase not only of automobiles but in large consumer items people will travel distances?

A I think you are right. In some cases, they will shop.

* * * *

REDIRECT EXAMINATION

BY MR. WEINBAUM:

* * * *

[fol. 225] Q Do you personally solicit in the Phillipsburg area?

A Not for some time. We did at one time, but not for some time.

Q How long has it been since you have?

A When we first established our consumer credit department, back in 1945, we did solicit the County, yes.

Q And when did you terminate that solicitation, approximately?

A I'd say a couple of years later, probably.

Q And did you at that time also start soliciting in Pennsylvania?

A No.

Q Why didn't you solicit in Pennsylvania?

A Well, our policy of the bank is not to go into Pennsylvania.

Q Why is that?

A The laws are different and we just don't move over. I think that is one of the reasons, the laws are different and we just never established going into Pennsylvania with a loan.

* * * *

[fol. 248] CLARK C. BOWERS, sworn.

DIRECT EXAMINATION

BY MR. AUSTIN:

Q Would you please give your address, Mr. Bowers?
A Home or business?
Q Home address.
A 38 North Lincoln Avenue, Washington, New Jersey.
Q And what is your occupation, sir?
A Attorney and banker.
Q With what bank are you affiliated?
A Washington Trust Company of Washington, New Jersey.
Q How long have you been with the Washington Trust Company?
A Forty-two years.
Q How long have you served in your present position?
A Since about 1930.
Q And that position is–
A President.

* * * *

[fol. 251] Q What are the rates–what rate of interest do you pay on passbook savings?
A Four percent.
Q And what rate do you pay on time deposits?
A It is only four percent for both.
Q Do you offer certificates of deposit or CD's?
A We have not yet.
Q To the best of your knowledge do the other banks [fol. 252] throughout Warren County, New Jersey, pay four percent on passbook savings?
A I believe so. I am not quite sure.

* * * *

[fol. 253] Q Do many of your customers use more than one banking service offered by your bank?
A Beg your pardon?
Q Do many of your customers purchase more than one service from your bank at the same time?
A Oh, they do, certainly.
[fol. 254] Q Do you regard this as a valuable feature of your banking business?

A I do.

Q Do you actually encourage your customers to purchase more than one of your banking services?

A Certainly, yes.

* * * *

Q To the best of your knowledge, does Washington Trust derive any business from Phillipsburg and environs?

A It does.

Q What types of business do you derive from that area?

[fol. 255] A Automobile loans, appliance loans, personal loans, collateral loans, and demand notes, and mortgages.

Q Do you know the approximate number of mortgages that you have in the Phillipsburg area?

A Twenty-three.

Q Do you know the approximate dollar value of those twenty-three mortgages?

A About $23,000. That's strictly a mortgage–strictly mortgages, not notes secured by mortgages. It would be far higher, if it were a note given to secure a mortgage.

* * * *

Q Do you know approximately how many notes you have that would fit that description?

A I believe there is only one. And that was probably a quarter of a million dollars. That's an approximate figure. But it was participated in by the Philadelphia National Bank.

* * * *

[fol. 256] Q Thank you. Do you know the approximate number of mortgages you have on your books at Washington Trust?

A I'm sorry, I do not have that. I have the total– the dollar value, but not the number.

Q What then is the total dollar value of the mortgages?

A About $4 million.

Q And that is as of this date or–

A Current.

Q Current. Thank you. Do you know the approximate number of consumer installment loans that you derive from Phillipsburg and environs?

A I do.

Q What is the number, total number of consumer installment loans you have in the area?

A If you would subdivide the question I could give it to you in automobiles, appliances, and personal loans, rather than as a gross, without me adding it up here.

Q What then is the total number of automobile installment loans you have from the Phillipsburg area?

A In the Phillipsburg area we have 63 of about $85,500.

Q That is the total dollar value of those automobile loans? [fol. 257] A In the Phillipsburg-Stewartsville vicinity.

Q What would be the total number of appliance loans you have in that area?

A We only have about eight of $3,100.

Q What would be the total number of personal loans you have in that area?

A We have 40 of about $23,000.

Q Do you know the approximate number of automobile loans you have on your books in Washington Trust?

A About 450.

Q And what would be the total dollar value of those?

A $928,000, in round figures.

Q Do you know the approximate number of appliance loans you have on your books?

A 250.

Q And do you know the approximate dollar value?

A $62,000.

Q Do you know the approximate total number of personal loans you have on your books?

A 375.

Q Do you know the approximate total dollar value of those loans?

A $371,000.

Q Do you know the approximate number of checking [fol. 258] or demand accounts you have from the Phillipsburg area?

A I do not.

Q Do you know the approximate total number of time and savings deposits accounts you have in the area?

A I am sorry, I do not, no.

Q Do you have any commercial or industrial loans in the Phillipsburg area?

A The one that I just spoke about, the large corporation in

which we have 10 per cent participation is, I believe, the only one.

Q May I ask, in reference to that, Judge Bowers, did Washington Trust originate that loan or simply participate with its correspondent bank?

A No, we instituted the loan. That is, the party applied to our bank for the loan. The Philadelphia Bank was requested by us to participate because it exceeded the 10 per cent of our capital and surplus.

Q What is your current lending limit?

A $125,000.

Q And how do you compute that lending limit, Judge Bowers?

A The capital and surplus, 10 per cent of the capital and surplus of the institution.

* * * *

[fol. 261] Q What types of business do you have from the City of Easton alone?

A Mortgage.

Q Do you know the approximate number of mortgages you have there?

A We have one mortgage in Easton of $25,000.

Q Do you get any other type of business out of the City of Easton?

A Yes, sir.

Q What types would it be, sir?

A We have loaned money on a taxicab business in Easton, Diamond Taxicab.

Q And what was the dollar value of that loan, approximately?

A Probably $10,000. I am not sure. That was guaranteed, of course, by an endorsement, also. Although we do have liens on all the taxicabs there.

Q Do you derive any other types of business out of the City of Easton?

A Not to any extent.

Q Do you derive any business out of any of the townships or boroughs I just named that surround the City of Easton?

A Yes, we have two mortgages at Windgap, Pennsylvania–I believe that is in Northampton County, in which Easton is [fol. 262] situated; I believe so. And we have one mortgage in Mt.

Bethel; and two in Pen Argyl, and one in Nazareth, Pennsylvania. And they are in Northampton County, or immediately next to it.

Q Do you know the total dollar value of those?

A I do. The two in Windgap are $36,900. The one in Mt. Bethel, $16,000. Pen Argyl, two of them, $30,400. The one in Easton, $25,000. And one in Nazareth, $16,000. A total of $124,300.

Q To the best of your knowledge, sir, do you get any business from Hackettstown, New Jersey?

A Yes, sir.

Q What types of business do you get from that city?

A Various loans, automobiles, appliances, personal loans, time deposits—or time collateral loans, mortgages.

Q Do you know the approximate number of mortgages you have in Hackettstown?

A That's one thing I overlooked, not the number of mortgages in any case.

Q Do you know the approximate total dollar value of the mortgages you have there?

A I can't give you that. (Examining papers.) Excuse me. We do have 21 mortgages to Hackettstown, 21 mortgages.

Q Sir, do you know the approximate total dollar [fol. 263] value of the mortgages?

A (Negative response.)

Q Do you know the approximate number of savings accounts you have from Hackettstown?

A No, I do not.

Q Do you know the approximate number of demand accounts?

A No, sir; I haven't that information.

Q Do you know the approximate number of automobile loans you have in Hackettstown?

A Yes, sir.

Q What is that number, please?

A $161,000; 103 of them.

Q Do you know the approximate number of appliance loans you have in Hackettstown?

A We have eight amounting to—excuse me. We have ten, $2600.

Q Do you know the approximate number of personal loans you have in Hackettstown?

A Forty-four, $32,000, total. That takes in Hackettstown, Port Murray, Port Colden and Great Meadows, in that vicinity.

Q Approximately how far is Hackettstown from Washington?

A Ten miles.

* * * *

[fol. 268] Q Could you give an approximation, Judge Bowers, of the amount of your total business derived from Washington Borough?

* * * *

[fol. 269] A Automobiles, we have 188 loans, totaling $554,400. Now, this is in addition to what I have testified to before. Appliance loans, we have 172, amounting to $36,800. Personal loans we have 135, totaling $240,000. And miscellaneous small loans, 25 of $19,000. And time and notes, collateral loans, $2,281,000.

And I'm sorry, I could have given you the grand totals, too. I see they are here.

[fol. 270] Q Judge Bowers, am I to understand that those figures are for Washington Borough or for Washington Borough and the township combined?

A Washington Borough and the immediate vicinity deducting what I have testified before, although I can give you our straight totals including them all, if you wish.

* * * *

[fol. 272] Q Do you recall any instances over the past five years where because of your lending limit you have been unable to adequately provide for the credit needs of a customer or prospective customer in the Washington area?

A Because of what?

Q Because of your lending limit for individual loans.

[fol. 273] A No. We have at least participation with other—our correspondent banks. We have no trouble. They are always glad to cooperate with us.

* * * *

[fol. 274] CROSS-EXAMINATION

BY MR. ROACHE:

* * * *

[fol. 275] Q When did your bank first give a rate of interest of 4 per cent, when did you first go up to 4 per cent?

A I would say within two years.

Q Are you sure of that, are you sure it wasn't longer?

A If you have a definite date, I don't recall when it was.

Q I don't have a definite date, but I thought it was four or five years ago.

A I doubt it. I believe two years would be nearer.

Q At that time what was the Phillipsburg National Bank charging as a rate of interest, if you know?

A It occurs to me that they were always less than what we paid; but what it was, I don't know.

Q Did this enable you to get business from Phillipsburg, because of the higher rate of interest?

A I wouldn't say so. I don't know. Certainly they never complained and we never were glorified by it, anyway.

[fol. 276] Q Who never complained, Phillipsburg National Bank?

A No, they are not the complaining type. And they didn't, anyway.

* * * *

Q Do you think you could do a better job with a full-time trust officer?

A Certainly.

Q Do you think there is trust business in the area to be had, if you could devote more time to this?

A I would believe so, though I don't particularly lead that line, that is, I don't—if I wasn't in there, I wouldn't care for my bank to be in the trust business.

Q So you don't concentrate on this business.

A Not at all. But business is available, I will agree with that.

* * * *

CROSS-EXAMINATION

BY MR. MEYNER:

* * * *

[fol. 277] Q And what would you say is the radius from your main office in Washington by which you consider your trading area?

A I would say maybe 20 miles. We have a lot of loans within that period, and we have them all over the State of New Jersey in the mortgage department, that we sometimes retain and sometimes pass them on to the Seamen's National Bank in New York.

[fol. 278] Q In other words, as a matter of policy, you would like to do your business within 20 miles, or 25 miles.

A Well, yes, because it is less investigation, we know the people. But that doesn't prohibit seeking business elsewhere, only we would be more cautious, for we wouldn't know the people, that's all.

Q But within an area of 20, 25 miles, you try to confine your business.

A Well, yes, but we are open for business elsewhere.

Q Even beyond that.

A Yes, we are, certainly.

Q And you do have a large commercial loan in the Phillipsburg area?

A We do, a participating loan.

Q You have lived in this area of Washington, or the Lehigh Valley area, for most of your life, have you not?

A I have.

Q Will you tell us something about the shopping pattern.

A Well, in Washington, from a grocery standpoint we are well taken care of. But for merchandise of women's clothing, men's clothing. I would say that it could be improved. And so I believe many people—I know my family—go to Allentown a great deal, and to the suburban—the great stores of New York, out in Short Hills.

[fol. 279] Q Do you or your family go to Allentown, Hess Brothers?

A Oh, yes, we do quite a bit of business with them, both I and my wife.

Q And, as a matter of fact, where in this area of Warren, Lehigh and Northampton Counties do you buy your suits?

A Well, I bought a couple over at Hess' just recently, Governor.

Q And do you have a credit card there?

A Oh, yes.

Q And do quite a few people in Washington have credit cards there?

A I believe so. Yes, sir; I would say they do.

* * * *

[fol. 284] Q Would it surprise you that Valley Federal Savings & Loan has forty mortgages in Washington Township?

A No. I would take your word for it, Governor, because I see it on the records as I look over things a little. I know they do a lot of business up in our way.

Q You are still the kind of practicing lawyer that does some searching around?

A It's a nice little vacation at times to go over there.

Q Are efforts being made by other banks and financial institutions to get the depositor's dollar?

A Sir?

Q Do you think that there are other people who want to get the dollar that you want for a deposit?

A There is no question about it. Yes, sir.

Q How about the activity of mutual funds?

A I would say there are at least three agents in Washington or vicinity that are seeking to sell mutual funds.

Q And have you seen—do some of your customers subscribe to these mutual funds?

A They do.

Q How about insurance?

A They are competitors. Insurance companies, you refer [fol. 285] to?

Q Yes.

A Yes. They are competitors.

Q And there is a concentration in your area?

A There are a few, really, the Prudential and Northwestern, I believe.

Q And how about savings and loans, that is for the depositors, too?

A Well, the Washington Building & Loan Association I know is after the dollars. They have sought an investment from me which I gave them, too.

Q As a matter of fact, you have one of the more successful building and loans there, don't you?

A Yes. I think it is a sound institution.

Q About four million dollars?

A I don't know, but is sound enough. I believe so.

Q Are you aware of the fact that city banks are attracting customers in the way of deposits?

A Once in a while I see mortgages go on over to Belvidere.

Q I mean deposits, like certificates of deposit. I am talking about the dollar that comes in to the bank.

A I wouldn't know. You mean they are seeking money of people, the insurance companies?

Q No. I am talking about mutual savings banks.

A Yes.

[fol. 286] Q And commercial banks advertising for certificates of deposit.

A I am informed that a substantial amount of money leaves Washington to those banks.

Q How about the stock market?

A Well, that is, of course, present in our vicinity. There is one in Easton that does quite a business with Washington people there, and even one in Allentown that even sought me.

Q Have you done some business with an Allentown brokerage firm?

A Yes. They called me one day and recommended something and I bought it and it is still where I bought it.

Q This is a stock brokerage firm in Allentown that called you about a prospective purchase and you were persuaded and bought it through the efforts of the Allentown brokerage company?

A I did. Waldon Company, I think it was.

Q We talked about the people who are trying to get the dollar that you want as a deposit. Now, how about the activities of people who want to loan money to people in this area. Do you have finance companies in the area?

A Yes. The American Finance Company has a rather prominent office in Washington.

[fol. 287] Q And you are not familiar with the amount of business they do?

A No, I don't know, but one of my directors in the automobile business has informed me that they do a considerable business.

Q And how about the finance companies that are connected with the motor companies or the appliance companies?

re quite competitive. One of the two that I lot of business with one of the finance are hard competitors, because I pressed for told me that they can do a little better with and we do not get all of the business from s because he has a better deal, so he says, npany.

ason of their setting up a reserve and then ches a certain amount they get a portion of correct?

it is done or not I would have an opinion

ans by insurance companies in the area?

liar with that, although I know that money insurance companies, especially when house, they get their downpayment on that ge and get the reserve from the [fol. 288] n the policy.

ns, mortgage loans? Other banks and other do come into your area in order to make

y do. We have had instances in the past was paid off by an insurance company.

from an insurance company—that has since

institution start with the Veterans when they originally came out?

ve two, three or four. We didn't follow it e so much work involved.

We have uraged Veterans Administration loans?

conver age tuition loans?

[fol. 2

have very many of those?

not, if any. I'm not sure.

deral Home Administration loans, FHA?

two or three of those, and maybe not.

ery few. Didn't encourage them.

ds, you limit your business to the type of loan?

ve did and do.

are of the fact that much of that business

in Federal Home Administration loans has gone to other sections of Washington or Northampton or Lehigh Counties?

A I understand that it has, yes, sir. I understand that it has.

Q In preparation for your appearance here I gather that you did some homework and thumbed through the loans of various types, is that correct?

A I had it done.

Q You had someone in the bank do it for you?

A I got a recapitulation on it, yes.

Q Who was in charge of that?

A Well, there is an assistant treasurer, Mrs. Flynn, who did it, and the assistant secretary, Mr. Cunningham, and Mr. Rudd, the treasurer and secretary of our bank.

Q Mr. Rudd would be in charge of getting it?

A He is the one whom I directed to have it done.

Q And you did not choose to try to go through your demand or time deposits in order to get a similar breakdown?

A I am sorry. I entirely overlooked that.

Q But you do have depositors within this twenty or twenty-five-mile area?

[fol. 290] A Oh, there is no doubt about it. Certainly we have depositors from Phillipsburg, certainly.

Q And from these other areas?

A Oh, yes, we do, all around there, quite some distance away. I was up near Columbia the other day and asked a woman for directions about things I am interested in up there, and she said, "I am a depositor in your bank" and that must be twenty miles away.

Q Columbia is just opposite Portland, Pennsylvania?

A Yes. I had no knowledge of it, but she said she was a depositor there in the bank.

Q You do permit banking by mail, do you not?

A Yes, sir.

Q Have you found that that is on the increase?

A I can't answer the question. I don't know.

Q You are not familiar with that detail, but you do have it?

A Yes, sir.

Q And if someone from Pennsylvania comes to this automobile dealer who is a director of yours and he wants to give you that paper you finance that paper?

A We do.

MR. MEYNER: That is all I have.

REDIRECT EXAMINATION

BY MR. AUSTIN:

* * * *

[fol. 293] Q I believe you testified, also, Judge Bowers, that you regard your trading area as encompassing a 20-mile radius of Washington, New Jersey. To what extent, if any, was that statement based on the breakdown of the geographic origins of your business that you gave me on direct examination?

A Well, the Hope vicinity there must be 20 miles away, and certainly the Hunterdon County area would be 15 to 20 miles, and Nazareth certainly would be 20 miles from my bank, and Pen Argyl, and we have—I see a list of three-quarters of a million in mortgages spread all over New Jersey, down in Ocean County even.

Q Do you happen to know whether you have any accounts, be they demand deposits, time or savings deposits, or loans originating out of New York City?

A We have some trust business originating out of New York City. Mr. Harold Sloan, a brother of Alfred P., to make it known who they are, we had some trust business that he set up for his grandchildren and son.

Q Do you have any business originating out of Newark, New Jersey?

A Yes.

Q What type of business would that be, sir?

[fol. 294] A That's quite a tragic affair, if you want me to say. There was a man on your—Prince Street, I think, was involved in difficulties here, and he ran a liquor store there, a package store on Prince Street. He came out to start a market in Washington, New Jersey, and he wanted to borrow some—say, $25,000, and wanted to give us the mortgage on the building on Prince Street there, which we didn't take. And after this trouble down here—we took a mortgage, however, on his home in the Oranges, which is a very nice home, it's a good mortgage, we still get it. But then the poor fellow was murdered here on the street, I understand, since then. So that is the story.

* * * *

[fol. 198] TROY E. RHOADES, sworn.

DIRECT EXAMINATION

BY MR. AUSTIN:

Q Would you please state your address, Mr. Rhoades?
A 147 North Main Street, Nazareth.
Q And what is your occupation?
A I am employed by the Nazareth National Bank.
Q In what capacity?
A I am president.
Q How long have you worked in connection with banking?
A Forty-four years.
[fol. 301] Q Approximately how far is Nazareth National Bank from the City of Easton?
A Ten miles.
Q Do you have any branch offices?
A One.
Q Where is it located?
A It is located six miles from our main office in the direction of Easton, in Forks.
Q Approximately how far is the Forks branch, your branch office, from the City of Easton?
A Four or five miles.
Q What is the date of the establishment of your branch office?
A December, 1964.
Q Would you please describe the various services offered by the Nazareth National Bank, including the Forks branch?
A Well, I would say we were a full service bank. We offer all types of banking services, checking accounts, savings accounts, loans, Christmas Club, travelers' checks, safe deposit boxes. We buy and sell securities. I have a Trust Department.
Q Do you also offer mortgages for mortgage loans?
A Oh, yes.
Q Would you please state the interest rate on passbook savings at Nazareth National?
A Four percent.

* * * *

[fol. 302] Q How long, approximately, has Nazareth National paid four percent on passbook savings?
A Two years, approximately.
Q What is the current rate of interest being paid on passbook savings by the banks in Easton?

A To my knowledge four percent.

Q And approximately how long have they been paying that rate of interest on passbook savings?

A Several months.

* * * *

[fol. 303] Q What is or what was, rather, the size of your Trust Department measured by total trust assets as of the year end 1967?

A You mean corporate or individual?

Q Total.

A About ten million of each, ten million individual trust and ten million corporate.

* * * *

[fol. 304] Q Do many of your customers purchase more than one of your banking services at a time, Mr. Rhoades?

A Oh, definitely.

Q Do you regard this as a valuable feature of your banking business?

A Indeed.

Q Do you actively encourage your customers to purchase additional services?

A Oh, yes.

Q Do you do any advertising for the bank, Mr. Rhoades?

A Oh, yes.

Q Through what media do you advertise?

A Well, primarily in local newspapers.

Q In which ones?

A They are weekly papers, the Nazareth Item, and the [fol. 305] Nazareth Key. We are on the radio, too.

Q What is the name of the station?

A WEEX.

Q Do you ever advertise in any Easton paper?

A We advertise our Forks branch very infrequently, perhaps once every two months, more or less in the form of institutional advertising, nothing specific.

Q Do you currently advertise your interest rate on either passbook savings or on certificates of deposit in Easton papers?

A To my knowledge, we have only done it once, and that was very recently, within the last months. That is the only time that it has ever been done.

Q At the time you went to four percent on passbook savings, what was the rate of interest being paid on passbook savings by other Easton banks?

A Three percent.

* * * *

[fol. 307] Q Mr. Rhoades, the plaintiff, the Department of Justice, has described for the purpose of this litigation Phillipsburg and environs as encompassing the City of Phillipsburg, Lopatcong Township, Greenwich Township, Pohatcong Township and Alpha Borough. To the best of your knowledge, does Nazareth National, either the main office or the Forks branch, derive any business from the area just described?

A To my knowledge, none

[fol. 308] Q How do you account for this fact, Mr. Rhoades?

A Well, they are not in our area. They are not in our trading area.

Q Are there any restrictions on your doing business in Phillipsburg and environs?

A Well, insofar as it affects our trust department, yes, definitely so. I'm sure there is a statute there to prohibit us from doing business without a license. I am almost sure of that statement.

Q Mr. Rhoades, what is your conception of the term "service area"?

A I would consider the service area to be the area immediately surrounding the main office and our branch that we serve—that we have deposits, that we make loans to, advertising, and so forth.

Q What then is the service area of your Forks branch office?

A It would be almost entirely Forks Township, which includes Stockertown and Tatamy, the Boroughs of Stockertown and Tatamy. They are adjacent to Forks Township. Actually, Forks surrounds it. They are boroughs in the Township.

Q Do you know approximately what percentage of the branch's total business comes from that area?

A No, I would not.

* * * *

[fol. 310] Q What do you regard as the service area of the [fol. 311] main office of Nazareth National?

A You are speaking of the main office.

Q Yes, sir.

A Not the branch.

Q Correct, sir.

A It is difficult to say. Of course, you can't pinpoint it, because it is like fingers going out. That's true of every bank. I would suspect that our service area would be probably a radius of five miles north, east, south and west.

Q And what townships or boroughs–

A Well, that would encompass lower Nazareth–well, the Borough of Nazareth primarily, upper Nazareth, lower Nazareth, parts of Bushkill, and parts of Plainfield, and parts of Palmer. It would not include Glendon or Williams. We have no business there, to my knowledge.

Q Would it include the City of Easton?

A To a degree, yes; unsolicited business, yes. We have some business in Easton.

Q What do you mean by "to a degree," Mr. Rhoades?

A We do not solicit and have not solicited–actively solicited business in Easton, either loans or accounts. We do have some, as we do in Philadelphia or Allentown, but we do not actively solicit.

THE COURT: What is the service area of your [fol. 312] branch–which you state, as I recall, was located four or five miles from Easton–

THE WITNESS: Yes. You want to know the service area of our branch?

THE COURT: Yes.

THE WITNESS: Forks Township, which includes Stockertown and Tatamy Borough.

Q Do you know what kind of business you derive out of the City of Easton to the main office of Nazareth National?

A Are you speaking of accounts or loans, or both?

Q All kinds of business.

A Well, we have checking accounts and savings accounts. We have no large accounts, no business accounts of any nature that I know of. We have no industrial loans there. We have residential mortgages there. We have small checking accounts, small savings accounts, some not so small, but individual, I

mean. Very few corporate accounts. I wouldn't be able to put my fingers on any at the moment.

Q Would you happen to know the circumstances through which you happen to have placed mortgages in the City of Easton?

A These were customers of the bank long before I was there. They have come back repeatedly. And word of mouth, perhaps, is the way it happens. But we have had customers [fol. 313] in Easton long, long before I came to the bank. So I wouldn't know how they originated.

Q Do you send any representative into Easton to solicit business?

A We never have.

Q Do you regard Wilson Borough, or West Easton Borough, as being within your service area, service area of the main office?

A Let me say, we have accounts there. So I suppose we have to give it some consideration in that form, yes.

Q Would you have any way of knowing approximately how many accounts you have in those areas?

A No, not without a survey.

Q To the best of your knowledge, Mr. Rhoades, do you obtain any business from Bethlehem, Pennsylvania?

A In isolated instances, yes.

Q To the best of your knowledge, do you obtain any business from Allentown, Pennsylvania?

A I would reply the same way. There are some people who wouldn't do business any other place than our bank. I don't know why, but they do. They stay there, and stay, and their children come back. But we do not advertise in that area, never have.

Q Would the business you have in either of these two cities constitute a sizeable percentage of your total?

[fol. 314] A Oh, no. We are talking about one, two per cent, or something.

* * * *

THE COURT: Pardon the interruption, counsel. I might observe here that I am becoming increasingly troubled with the generalities with which I will have to deal, as they are developing in the evidence. It seems to me that in the vital areas

there is such lack of specifics that I can foresee myself having a little difficulty in attempting to evaluate these generalities.

* * * *

[fol. 315] Q Do you obtain any business from any portion of Warren County, New Jersey, outside of Phillipsburg and environs?

A No.

Q Do you obtain any business from the northwestern portion of Hunterdon County, New Jersey?

A No, we do not.

Q Do you obtain any business from Riegelsville, Pennsylvania, in Bucks County?

A No.

THE COURT: Mr. Rhoades, I think you indicated before that your business is concentrated within a radius of five miles of the town of Nazareth—east, west, north and south. Has your bank ever been particularly interested in extending its service area?

THE WITNESS: No, sir; never. We are old fashioned.

THE COURT: And I also gathered from your testimony—maybe I am wrong—that you make no effort to do it. Is that correct?

THE WITNESS: No. I would like to clarify [fol. 316] that, if I may.

THE COURT: Go ahead.

THE WITNESS: We are a large bank in a small town. We have about all we can handle right where we are there. We are progressive and active. We take care of our people and we have got just about all the business we can handle right there in Nazareth.

THE COURT: So would I be correct then in reaching this conclusion—please don't hesitate to disagree with me—the conclusion to which I refer is—strike it.

Is it true that your bank is not interested in extending its service area because it is not in a position to service the needs of more patrons than are generated within the service area you described; is that correct?

THE WITNESS: Partially so. If we attempted to do that we would have to change our complete structure, in the form of additional help, officers, and so forth, I am sure. We don't turn anybody away. But we feel that we have no business in the

Easton area, and they have enough banks there to take care of their own business. They do not come into our territory, we don't go into their territory.

THE COURT: Summarized then, I understand this [fol. 317] to be some absence of competition.

THE WITNESS: Well, our competition is local. We have got plenty of that, savings and loan, and the other bank, we have got plenty of competition, about all we want.

THE COURT: Go ahead.

Q What is the current lending limit for individual loans at your bank, Mr. Rhoades?

A $240,000. That's our basis. The Comptroller says we can lend more, but we don't believe him.

Q How do you compute your lending limit?

A 10 per cent of our surplus and capital. If we include the undivided profits, which we are permitted to do, we could go up to 300,000.

THE COURT: I didn't hear you, Mr. Rhoades, when you mentioned the figure before. What was that?

THE WITNESS: 240,000.

THE COURT: Thank you.

Q Do you recall any instance over the past five years where, because of your lending limits, you have been unable to adequately provide for the credit needs of a customer or a prospective customer?

A We had occasion to lend amounts higher than that. We have no problem furnishing them with the credit, none whatsoever.

[fol. 318] Q And how were you able to furnish that additional credit, Mr. Rhoades?

A We participated with local banks.

Q Were any of the banks which participated with you located in the Easton area?

A Yes, I believe so, yes. At least one occasion, yes.

Q Which bank was that?

A I think it was Northampton National. I am not quite sure. I believe it was Northampton National, yes.

Q In each of these instances, was your bank regarded as the lead bank?

A In the instances I am speaking of, yes.

Q Have you been asked to participate on loans originated by the other Easton banks?

A Yes, frequently.

Q During the past five years have you participated in a loan with the Phillipsburg National Bank or the Second National Bank in Phillipsburg, New Jersey?

A No, we have not.

Q During the past five years have you participated in loans which, although not in excess of your lending limit, you simply preferred to share with other banks, for any reason?

THE COURT: Would you read that question back, please?

[fol. 319] (Question read.)

A Yes, we have, with the local bank only, in Nazareth. And the character of a loan of this type would be a church loan where they want each of the banks to share in it. A matter of convenience only, that's all. No other reason.

[fol. 320] Q Mr. Rhoades, do you know the approximate ratio of your total demand deposits to your total deposits at Nazareth National?

A I will give you the total of each, and you can figure the ratio. Presently, or as of the year end?

Q As of the year end 1967.

A The year end, our total deposits were $28,700,000 of which $7,800,000 were demand and $20,900,000 were time.

Q Do you happen to know the approximate ratio of your real estate or mortgage loans in proportion to your total loans as of the year end 1967?

Plaintiff's Exhibit 39 indicates, Mr. Rhoades, that as of the year end 1967 Nazareth National's ratio of real estate loans to total loans was 63.2 percent and your ratio of commercial and industrial loans to total loans was 12.7 percent. How do you account, first, Mr. Rhoades, for the ratio between your demand deposits and your total deposits

A Oh, this is normal for a small bank. This is probably a pretty usual ratio throughout the entire area for a bank our size. This is normal.

Q What factors would account for this?

A Well, we don't have the industry you would have in a larger city where your ratio would be perhaps fifty-fifty. You do not have large industries there and consequently our checking accounts are smaller and we are predominantly [fol. 321] a savings institution.

Q In what manner would the presence or absence of industry in a particular area affect the level of your demand deposits at any given time?

A Well, the more and the larger industries that you have, naturally, the higher your demand deposits should be under

normal conditions, and that would be affected by reason of this fact.

Q Would this have anything to do with compensating balances?

A To a degree.

Q How do you account for the ratio of your real estate loans to total loans, Mr. Rhoades?

A Probably the same answer. These are mortgage loans which—it's a natural situation with a smaller bank in a smaller town. You get into city banks, and they don't make mortgage loans. Your smaller bank must of necessary depend upon this type of loan to exist, because though we perhaps have a higher proportion than all these small banks would like to have—but this is a situation that is not easy to correct.

Q According to your present policy and planning, Mr. Rhoades, will you attempt to increase the level of your commercial and industrial loans by extending your present service area?

[fol. 322] A We are not so planning, no.

Q Turning for a second to your Trust Department services, Mr. Rhoades, approximately when was your Trust Department established at Nazareth National?

A Between 1925 and 1927. I don't know the exact year.

Q And how many persons manage your Trust Department at present?

A Speaking of officers, or persons?

Q Yes, sir, officers.

A We would have one full-time Trust Officer and another Trust Officer who supervises and about four employees in the department.

Q Do you happen to know, Mr. Rhoades, the approximate size of your bank at the time you hired your full-time Trust Officer?

A Oh, that was—I am sure that he became associated with the bank when we started the Trust Department, although I have no way of knowing that. I just suspect our president who was the Trust Officer at that time—I know he was one when I came into the bank, and I would think that he would have been made Trust Officer in addition to being president at the time we took out trust powers.

THE COURT: Mr. Rhoades, I think counsel wants to know, if you can answer the question, when the bank employed a

full-time Trust Officer, not when the
[fol. 323] Trust Officer became associated–
MR. AUSTIN: That is correct. Thank you.
THE WITNESS: I would say 1950, close to 1950.
Q And would you have any way of knowing the approximate size of Nazareth National Bank at that time?
A You mean of the commercial department or the Trust Department?
Q I mean in terms of total assets of the bank.
A That would have to be a guess. I wouldn't know without my records what it was.

CROSS-EXAMINATION

BY MR. MEYNER:

* * * *

[fol. 325] Q Haven't you had an increase of better than half a million a year in this Forks branch?
[fol. 326] A If we count the accounts that were brought down from the main office, yes. Just yesterday there was a gentleman who came in to see me. He said, "I am going to transfer my account, my savings account, from here, from the main office, to the branch, because it is more convenient," and this is being done constantly. He lives in that area. We have no way of knowing what business originated there that we still retain. We could by analyzing–
Q Why did you move? Why did you decide to locate a branch in Forks Township?
A To better service our area. We do a lot of business and still do in just the region I gave you, Tatamy, Stockertown. We were servicing these people in the main office, and we felt we could do a better job, and it is a proven fact that we can take care of them better in a branch than we could at the main office–at the back door.
Q When you were advised you were to appear in this case did you make any effort to go through the accounts and see the post office addresses of the various depositors?
A Heavens, no.
Q So you may have some accounts from Phillipsburg or Alpha or Washington, New Jersey?

A I am sure we don't. I would know it if we had.

Q How many accounts do you have, demand deposits, altogether?

A About 10,000.

[fol. 327] Q And how many time?

A Well, three and seven–that would be–

Q You would know out of 10,000 accounts whether you have someone with a Post Office address in Phillipsburg?

A If the account was over $5,000, I certainly would.

Q If it were less than $5,000?

A I wouldn't necessarily know that, no. I wouldn't care.

Q You wouldn't know if you had one in Riegels Ridge?

A No. I might have one in California, and not know. Out of 10,000 accounts–but I know any with any substantial amount. I would know definitely.

Q This would be $5,000 or over?

A Yes.

Q So you could have fifteen accounts in Phillipsburg?

A I could have fifteen. I might have. I don't know. All I do know–

Q So you are not testifying on the basis of having looked over a substantial number of your depositors?

A No. I am testifying on the basis that I spoke to my managers at both the main office and at the branch and they said they had no knowledge of any accounts in Phillipsburg, and they would know.

Q Did you have them check through the accounts?

[fol. 327] A No, it is not necessary.

THE COURT: There is one thing that I would like to clarify in my mind, Mr. Rhoades. You indicated that unless the account–the demand account were $5,000 or more you wouldn't have knowledge as to the source of it.

THE WITNESS: Let me explain it this way–every account.

THE COURT: Rather, put it another way, you don't have knowledge at this time, Go ahead.

THE WITNESS: Every account that is opened and closed is placed on my desk, every account, whether it is ten cents, it is put on my desk, and anything that is $5,000 or over that is closed or open, unless I am familiar with the account I immediately check to see where it originated. I have never, never had such an account that I found originated in Phillipsburg.

THE COURT: You spoke a moment ago about information

given to you by employees, particularly with reference to any account in Phillipsburg. To your knowledge would the same apply to them, that is, that if they were not $5,000 or over they wouldn't have particular information available?

THE WITNESS: No, that would not apply because [fol. 328] the tellers, the managers of the branches are very familiar with these accounts. I am not. They are working with these every day and know the people and if there were a substantial amount they would know about it in any substantial amount even though the balance were small, because we address communications to these people from time to time. They would know about it.

THE COURT: Did you, before you came to court, and discuss this matter with your employees, did you ask these employees to check their records?

THE WITNESS: No.

THE COURT: So the information you've got, the best information you have is from this recollection?

THE WITNESS: That is correct

THE COURT: Without checking the records?

THE WITNESS: That is right.

THE COURT: I have one further question. I would assume–you correct me if the assumption is wrong–that there are not too many individual demand accounts in excess of $5,000 percentagewise?

THE WITNESS: Oh, no, that is incorrect.

THE COURT: All right. You mean that there would be a very substantial percentage of individual demand accounts, not business accounts, or industrial accounts?

[fol. 329] THE WITNESS: Oh, you are excluding–no. I think you are correct in that.

THE COURT: What would you say, from your experience in the banking business, that that ratio would be?

THE WITNESS: The percentage would be as to people who carry $5,000 or more balance in checking accounts, individuals? I wouldn't–I couldn't answer that–

* * * *

Q Do you still advertise?

A Yes.

Q How far does that reach?

A I don't know.

Q Didn't you ever receive the bulletin or their brochure showing the area covered by WEST?

A I possibly have. I wouldn't recall.

Q Would it surprise you that it covered at least a twenty-five or thirty-mile area?

A I hope it does or I am paying money for nothing.

Q In other words, you want to advertise in that area?

[fol. 330] A I said I hoped it covered that area.

Q So you are interested in a wider area than four miles from your branch?

A I can't stop people in Stroudsburg from listening to WEEX. If I want to advertise on the radio I have to take what they give me. Certainly I am not interested in Stroudsburg, but perhaps they are heard up there. I don't know.

Q Can you explain the inconsistency when you say you wanted to serve a field of a five-mile area north, south and east of the main office and of the branch and the fact that you advertise twenty-five or thirty miles away?

A Well, if you could show me how I can tell that we can cut it off. I don't want to advertise in Phillipsburg or Bethlehem. I don't know how they can do this. If I want to get on the radio I have got to accept their–

Q You only advertise so you can reach your own neighborhood?

A We apply it to them primarily.

Q In other words, you don't want to get out that far but in order to get to the five miles beyond your two offices you have to take that?

A I would assume so, yes.

Q And you are not interested in going beyond the five miles?

[fol. 331] A Not primarily, no.

Q Could it be if you did reach out to a larger area you would encounter more competition from the other banks?

A There is no doubt about it.

Q You would prefer to sit still and not have any competition?

A No, sir. That is incorrect. What I am saying is this, we are interested in growing, but we are interested in growing soundly, and we are not interested in being the biggest bank in the area, which I believe I am afraid is a failing of a lot of us bankers today. We don't want to be big just for bigness's

sake. We will take the business that comes to us and try to take care of our customers, and we will be active and we will compete, but we are not interested in being the biggest bank in Northampton County and never have been, but we have a sound business and we hope to keep it that way.

Q And you believe that you will remain sound by going five miles—in a radius of five miles?

A No, I don't say that. I say that this is what we have done up to this point, because I believe sincerely we have no business soliciting business in Bethlehem or Allentown or Phillipsburg. I don't think we are in business over there.

Q But there is nothing in the law that prevents [fol. 332] you from doing it?

A Not to my knowledge.

Q And there are some bankers who would disagree with you?

A Oh, most of them would, I am sure.

Q So you are definitely in the minority in your concept that your area is limited?

A I suspect I am, unfortunately.

Q Isn't it a fact that under the Comptroller's rulings that your loan limit would be something like $325,000?

A It changes every day.

Q Well, you would concede that the Comptroller would allow you ten percent of capital surplus and undivided profits?

A Except your undivided profits change daily, and it would depend on what day you pick.

Q As of June 30th, 1968, it happened to be $750,000 for your bank.

A Then that would be correct.

Q As of that date you could have loaned up to $325,000?

A If those figures are correct, yes.

Q I am looking at your statement of condition dated June 30th, 1968, which says common stock, $400,000; [fol. 333] surplus, $2,000,000; undivided profits, $750,000.

A Then you are absolutely correct.

Q You apparently have developed a sizeable Trust Department. Would you say that there is competition? Would you say that there is a demand for this kind of business?

A We try to make a demand for it. We sell trust services quite actively.

Q Would you describe generally the nature of the corporate trust?

A Well, perhaps the best way to explain it would be a local school issue in which case an authority would be set up that would be named Trustee for the issue. That is my conception of a corporate Trust. These are the types we have.

Q How about the small employer that has a pension fund or profit sharing plan?

A I believe we have about two accounts like that.

Q But that is a potential for banks in the area?

A Oh, yes.

Q And more could be developed if people went out actively for them?

A I suspect there wouldn't be too much demand in our area, due to the nature of our industry, and the reason I say this is that our primary industries and large industries [fol. 334] are the national cement companies, and they would have their New York banks take care of something like that. They would not give us part of their business. Penn Dixon Cement, and so forth.

* * * *

[fol. 338] Q Do you find that you have any competition with motor companies, finance companies?

A You mean automobile finance companies?

Q Yes.

A No, we do not.

Q Why don't you compete with them?

A We have every automobile dealer in Nazareth. Every automobile dealer in Nazareth does business with us. We have quite active accounts. There is no competition. We have it all.

Q They don't use the General Motors Acceptance Corporation?

A Yes, they do. They all do that because every automobile dealer gets deals no bank would take.

Q Isn't it true that they are competing for business with you on the installment loans?

A Some, perhaps, yes, but the one dealer we have there—we don't have many dealers in town. One dealer does business one hundred percent with us. All accounts go to us, and the two other dealers are not primarily our customer, but every customer that deals with us is brought to our bank, so I

wouldn't say– I wouldn't think that they were in competition with us at all.

Q But you know they are trying to sell dealers?

A Sure, they are. Of course, they are.

[fol. 339] Q So that they endeavor to reach the very customer you are reaching?

A You mean the bank or the finance company?

Q The finance company.

A Well, it's not nearly as active as it used to be.

Q It was more active at one time?

A Yes.

Q Less active since credit has tightened?

A No. I think it is more active since the banks have gotten awake and taken up some of this business themselves. They are not as strict as we were, I think, a few years ago on that, and we lost a lot of business, and today, why, this is not so true.

Q You are reconciled to a percentage of write-off every now and then?

A Yes.

* * * *

[fol. 340] CROSS-EXAMINATION

BY MR. WATERS:

Q Mr. Rhoades, are you aware of the presence of [fol. 341] the Girard Trust Bank in Riegelsville?

A Yes.

Q Do they solicit business in your area?

A That is the one that got the trust account.

Q Do you know if they actively solicit business in your area?

A They haven't bothered us, because we are pretty proud of our trust department. We have done a good job, and it has been a successful operation. And we are very active. And we don't fear competition in that area.

Q I understand that, but setting aside whether they bother you, do they actively solicit business in your–

A I wouldn't have any idea.

Q You don't know. You did lose an account to them.

A Yes, we did. We didn't lose it, we never got it.

* * * *

[fol. 342] Q I believe you remarked that a smaller bank could conceivably have a lot of very specialized personnel. Do you regard this as a substantial factor, judging the ability of a bank?

A No, no, just the opposite. Just the opposite. Your city bankers are more specialized, your small bankers are not. They must have a more general knowledge of what is going on. In other words, in a small bank, the president of the bank has to have a pretty good talking knowledge of trust business, whereas in a city bank he doesn't even know what it is.

Q And do you think that such an officer is better able to handle trust business than a specialized trust officer?

A Oh, no, definitely not. He shouldn't attempt it.

[fol. 343] CROSS-EXAMINATION

BY MR. ROACHE:

Q Just a couple of questions. Do you know what your trust assets were back in 1950, when you first hired a full-time trust officer?

A No, sir.

Q Would you have any idea whether it was under a million dollars in trust assets?

A Oh, no, no. It was at least 50 per cent of what it is now, perhaps more.

Q Do you attribute the 100 per cent increase to the fact that you hired a full-time trust officer?

A No. I think a lot of the increase, quite frankly, is due to inflation.

* * * *

[fol. 344] REDIRECT EXAMINATION

BY MR. AUSTIN:

Q Mr. Rhoades, you have testified that you are primarily interested in serving your own local area as opposed to serving a larger area. I am wondering are there any particular difficulties, from a banking standpoint, involved in attempting to service a geographic area extending, say, to a 30 or 40-mile radius from the home office.

A Not unless it were in another state. It would then, definitely, because the instruments you use in your loans are entirely different, and the laws are different.

I might add in that connection, if this will help, that we do not have any instruments, any loan instruments in our bank that we could use to make a loan in New Jersey. We do not have a single instrument of that type. If we wanted to make an automobile loan, we couldn't do it in New Jersey.

Q Aside from any legal difficulties that you might encounter in attempting to do business across a state line, is there any concern on the part of a bank as to collection problems associated with doing business at a considerable distance from the home office where you have no branch office located?

A Well, this naturally follows, but it shouldn't be a deterrent, in my opinion. If you are willing to go out and [fol. 345] solicit business outside your area, you should be prepared to set up proper collection policy. One should follow the other. If you want one, you have got to have the other.

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[fol. 347] REESE D. JONES, sworn.

DIRECT EXAMINATION

BY MR. WEINBAUM:

Q Mr. Jones, what is your address, please, and occupation, your home address?

A 704 Pine Top Drive, Bethlehem, Pennsylvania. My occupation, I am president of the First National Bank & Trust Company of Bethlehem, Pennsylvania.

Q How long have you been with the First National Bank?

A I joined the bank in January of 1967.

* * * *

[fol. 349] Q As of year-end 1967, Mr. Jones, how big was your bank, measured in assets, approximately?

A 120 million, roughly, somewhere in there.

Q And your deposits as of that time?

A About 103 million.

Q Where is your bank headquarters?

A 535 Main Street, Bethlehem, Pennsylvania.

Q And how many offices do you presently operate?

A Seven, including the main office.

Q And where are these six branch offices located?

[fol. 350] A All within the City of Bethlehem, except one. There is one in Bethlehem Township, which is right outside of Bethlehem.

Q Is that east of Bethlehem?

A East, yes.

Q How far is your main office from Phillipsburg, approximately?

A I really wouldn't know.

Q Approximately how far are you from the City of Easton?

A I would guess we are nine, ten miles, somewhere around there.

Q And how far is your Bethlehem Township branch from the City of Easton?

A I'd say five miles, four or five miles.

* * * *

[fol. 351] Q What rate has your bank been paying on passbooks savings?

A 4 per cent.

Q And for how long have you been doing that?

A It was in 1966, somewhere around May, June. June 1st I think was the effective date that we went to 4 per cent.

Q How many other banks are there headquartered in Bethlehem?

A One. That is the Union Bank of Eastern Pennsylvania.

Q Do you know whether or not the savings rate which that bank has been paying is similar to the one you have been paying?

A Yes. In fact, the change was made at the same time. They may have preceded our bank by perhaps a week, something like that.

* * * *

Q Can you describe for us in some detail the trust services which your bank offers?

A Well, the trust services, we have probably as complete [fol. 352] a trust department as you would find in the Lehigh Valley. And I think you could describe our trust department as one which would compare very favorably with at least two of the major trust departments in Philadelphia. It is a broad based department and something we have been emphasizing a great deal.

Q Do you offer corporate as well as personal trust services?

A Yes.

Q How many trust officers are in your trust department, approximately?

A We have three vice presidents and I guess there are three or four other officers in there, somewhere around there. I don't know exactly.

Q Are you familiar with the services offered by a bank like the Girard?

A Yes.

Q Or the Chase Manhattan Bank?

A Yes.

Q Can you state whether or not your bank's services—the offering of services would represent a large portion of the services offered by these banks?

A I think this is true. I think the only place where we would not be comparable with them would be perhaps in closed corporation type work. We don't have a department for that.

[fol. 353] Q What do you mean by that type of work?

A Well, this would be where a closed corporation was left in a trust, and they have people who can run this, and see that it is sold successfully, and so forth. We don't have that. But if you take any other service offered by trust departments, we compete with the large city banks all the time, and we don't lose very many. As a matter of fact, I think—I can't recall in the last year when we have been competing for a trust with a major city bank that we didn't get the account.

* * * *

Q What does the term "country bank" mean in banking circles, Mr. Jones?

A Well, I think the term "country bank" is really

something that was generated by the Federal Reserve System years ago merely as a classification, anything that wasn't in a major metropolitan area. I think that is the way the term grew up. But I woudn't know how to define what is meant by a country bank.

[fol. 354] Q Do you consider your bank a city bank or a country bank?

A City bank.

Q Excuse me?

A City bank. City-type—I would clarify that by saying we operate like a city bank, try to, and geographically perhaps we would be defined as a country bank.

Q Mr. Jones, do you know approximately what proportion of your bank's total banking business originates within the city limits of Bethlehem?

A I would venture to say it is in the vicinity of 90, 95 per cent, within the city limits. If we included, say, Bethlehem Township with that, it would certainly—

Q What is the basis of this estimate, please?

A Well, the basis of it is just what we see in the day-to-day operations, where our loans are coming from, where deposits are coming from. And most of them originate within a very close area of the bank.

Q Would this figure apply equally to the various types of business offered by your bank?

A I would say it would, although, especially in the trust area, we do business at distant points, in trusts. And more of our business is coming from places other than the city limits in the trust area, I would say that.

Q Mr. Jones, we have defined the Phillipsburg area, [fol. 355] for purposes of this case, to encompass the City of Phillipsburg and the immediate surrounding municipalities of Lopatcong, Pohatcong, and Greenwich Township and Alpha Borough. To the best of your knowledge, do you do any business in this area?

A We do some, yes, but it would be, I would say, negligible.

Q What type or types of business would you do there?

A We have had a trust account or two that have come out of Phillipsburg. The other areas you talked about I am not at all familiar with. And we have had a loan or two come out of Phillipsburg.

Q Do you do any mortgage business there?

A No, not to my—there could be some come through, but it is nothing major.

Q Do you have any commercial and industrial loans in the Phillipsburg area?

A There is only one, to my knowledge, in Phillipsburg.

Q Do you know the circumstances surrounding that particular account?

A Yes, it is a Bethlehem resident.

Q Excuse me?

A It is a Bethlehem resident owns the company.

Q Have there been any instances, in your recollection, [fol. 356] where people from the Phillipsburg area have approached your bank with respect to a commercial and industrial loan?

A Not to my knowledge.

Q Mr. Jones, we have described the Easton area to encompass the City of Easton, and the surrounding municipalities of Forks, Williams and Palmer Townships, and Wilson, West Easton, Glendon, Stockertown and Tatamy Boroughs, and I was wondering if you could tell us whether, to your knowledge, your bank does any business in this area.

A I am sure we do some. But, as I said, I wouldn't think it would be a significant part of our business.

Q Do you know the types of business which you have in that area?

A Commercial and industrial would be modest, at best.

Q Do you know how many commercial and industrial accounts you have in that area?

A No, I wouldn't know offhand.

Q How about mortgage loans?

A We don't see much mortgage demand from that area.

Q Do you do any trust business in the Easton area?

A Yes, we do.

Q Can you approximate for us what you would believe to be the amount of trust business which you derive [fol. 357] from that area?

A I couldn't give it to you in dollar volume, but I could say on the basis of numbers. Let's take the last twelve-month period, I would estimate that maybe we have done 30 or 40 accounts.

Q Thirty or forty fiduciary accounts?

A Yes, out of that area.

Q How many total fiduciary accounts does your bank have, can you approximate that for us?

A The active accounts right now run in the vicinity of maybe 700.

Q When you say active accounts, what do you mean?

A These are accounts we are working with—accounts that are still open. There are some that have been closed out and we are still carrying them.

Q Would this include wills that you have for safekeeping?

A No, these are accounts on the books. This is not including the will file. If it included the will file, why—this runs way up.

Q Mr. Jones, to your knowledge, does your bank do any business elsewhere in Warren County, New Jersey?

A We may do some over there, but it couldn't be anything significant, or I would certainly know about it.

Q To your knowledge, do you do any business in [fol. 358] Hunterdon County, New Jersey?

A I don't even know where Hunterdon County is.

Q Mr. Jones, do you derive any business from Riegelsville, Pennsylvania, as far as you know?

A Yes, we do. We have accounts down that way.

Q Can you tell us the type or types of accounts you have there?

A We have an automobile agency, we do buy their paper.

Q Do you have any mortgages down there?

A Not to my knowledge.

Q Do you know of any other loans you have down there?

A No, I do not.

Q Do you have any business, to your knowledge, in Nazareth, Pennsylvania?

A We have accounts out of Nazareth, but I wouldn't describe that as being significant, either. There are some accounts. Commercial and industrial out of Nazareth is nothing major. We do have a lot of individual accounts, you know, depositors, borrowers, small borrowers.

Q Do you do any business in Allentown, Pennsylvania?

A Yes, we do.

Q Are you able to estimate approximately how much of your business would be derived from Allentown?

A I wouldn't hazard a guess. I really wouldn't know.

[fol. 359] Q How far is Allentown from Bethlehem?

A Allentown is actually contiguous to Bethlehem. And

probably the downtown Allentown and downtown Bethlehem are probably four miles apart, three miles apart.

* * * *

Q Can you tell us, Mr. Jones, in what newspapers, if any, you advertise?

A Well, of our newspaper budget, I venture to say that we spend 90 per cent of our money advertising in the [fol. 360] Bethlehem Globe-Times. We have advertised in the Easton paper, and we have advertised in the Allentown paper. But most of it is in the Bethlehem Press.

Q Does your bank personally solicit business as well as advertise?

A Yes, sir.

Q And can you tell us where your bank solicits business?

A Well, we solicit in Bethlehem and Allentown, Easton, Stroudsburg.

Q To what extent have you solicited in Easton?

A In trusts we have solicited heavily. Commercially, we haven't done as much.

Q And for how long have you been soliciting trust business in Easton tabloids?

A I'd say the last year.

Q Have you solicited other types of business in Easton?

A Yes, we have, commercial accounts.

Q To what extent have you solicited?

A In commercial?

Q Yes.

A I would say it wasn't on what I would call a planned basis, or an intensive basis. I would say it came about primarily as a result of leads that came to us, people[fol. 361] looking for loans.

Q Mr. Jones, can you tell us why you believe your bank hasn't done more business than it has in the New Jersey area?

A Well, I guess if you want business you have to go after it, let people know you want it. We haven't done that in New Jersey.

* * * *

[fol. 363] Q Mr. Jones, Government Exhibit 44 indicates that at the end of the year 1967 you had approximately 13.7

percent of your money in commercial and industrial loans. That is 13.7 percent of your total loans were in commercial and industrial loans.

A That is right.

Q How do you define a commercial industrial loan?

[fol. 364] A The loans to business, I think, for working capital purposes, equipment purposes, inventory.

Q Do you include under commercial and industrial loan category non-residential mortgages?

A No, sir. Any commercial mortgage, commercial or industrial mortgage would be classified as mortgage. This figure that you read, thirteen percent, is a little bit misleading. Actually we probably run somewhere in the vicinity of twenty-two million dollars including–

Q Are you generally familiar with the C & I ratio of the city banks?

A I know they are considerably higher than ours. If you ask for a figure, I wouldn't know. I would guess they perhaps run on an average somewhere around seventy percent of the total loans. I have not looked at the figures.

Q Can you tell us, if you know, why your commercial industrial loan rate is not higher?

A Well, I think there are several reasons for it. First, a lot of companies in our area are headquartered elsewhere and are borrowing from another point, and of course ninety percent of our industry is Bethlehem Steel, and certainly they don't need us for borrowing purposes, and I think the third reason, probably as good as the other two, is the fact that we just have not been agressive. We [fol. 365] just have not gone out and gone after it, and this we are going to change. We are in the process of changing.

Q What is the lending limit of your bank, Mr. Jones?

A About $790,000 at the year end. That is including the undivided profits and capital.

Q And is that lending limit large enough to handle the credit needs of the largest companies in your city?

A Yes, I believe so. We have run one or two over the limit. We were accommodated with Metropolitan banks.

* * * *

Q And can you explain for us what changes, if any, were instituted when you joined the bank?

A This is a very long story. To simplify it, it was a case where banking was being done at this bank as it had been done in the 1940's and 1950's. This industry is an industry that changes tremendously, and what we tried to do is bring it up to date, to do the things that had to be done to get young people in. We changed our entire [fol. 366] marketing strategy and it paid out very handsomely.

Q Did you hire any new people?

A Yes. We had very dramatic changes in personnel. We instituted a mandatory retirement policy in 1967 which meant that some ten or twelve people automatically left. Then we had to fill these positions, high official positions in the bank with young blood, and I guess, all told, we hired—oh, fifteen or so male employees and I wouldn't know on the female side how many.

Q How many college graduates were there at your bank when you joined it?

A One.

Q And how many do you have at the present time?

A Seven or eight, and a couple with Master's degrees.

Q And in your experience, Mr. Jones, in dealing with banks do you have an opinion as to whether an executive talent search would be necessarily more or less difficult for a fifteen to twenty-five million dollar bank than it is or was for your bank?

A I can't give an opinion on that basis, but I can only say this, that any place I go if I want men I could get them. I never had any trouble.

Q Do you pay them high salaries?

A Not the salaries. Salary is not the important thing.

Q What is the important thing?

[fol. 367] A Well, if you want to get the kind of men that are worth something, what they want is for you to bring them in and let them do what they know how to do and stay out of their way. A man like that has pride. He doesn't want somebody checking. He doesn't want a built-in monitor. He wants to be able to prove himself. That is what we do. I think the tendency in banks in general, from what I have observed—I don't say this unkindly—I think they treat employees and potential officer material as though they were in elementary school, and I for one wouldn't work on that level in the bank. If I had to work on that level I wouldn't be in the business.

Q Mr. Jones, is your bank doing any of its bookkeeping with computers?

A Yes. We are computerized.

* * * *

[fol. 369] Q In your opinion, Mr. Jones, would a fifteen to twenty-five million dollar bank generally be able to afford to buy a computer?

A No, not in my judgment. I think the cut-off—I think it would have to be seventy-five million dollars or over to make it worthwhile. Everything I have studied indicates this.

Q In your opinion, Mr. Jones, would it be economically feasible for a bank from fifteen to twenty-five million dollars to lease a computer?

A Lease it from whom, from the manufacturer?

Q Lease it from a manufacturer or some other lease arrangement.

[fol. 370] A I really don't feel qualified to answer this because since we have done our studies there have been some new equipment come on the market, as I understand, at lower cost, so I wouldn't—I really couldn't answer.

Q Mr. Jones, are there any other procedures whereby a small bank can avail itself of computer services?

A I understand there are off-premises relationships with correspondent banks.

Q Could you explain briefly how this works?

A I really couldn't explain the detail because all I know is that the bookkeeping functions of some smaller banks are performed by larger banks with equipment. Beyond that I couldn't say. That would get into the mechanics of it. I don't even understand a lot of what we do in that area.

Q What type of work is done on your computer?

A We do demand deposit accounting. We have consumer loans, club accounts, and proof in transit will go on very shortly, and we will have the entire consumer credit on in a month or so. We will have the whole bank, the whole works, including the Trust Department.

Q Have you been doing any payroll for your commercial customers?

A No, sir.

Q Do you plan to do this?

[fol. 371] A No, sir.

Q Why is that?

A We can't make any money.

Q Will the computer bring cost savings to your bank?

A Not significantly, no. I would say that we will break even on a cost—from a cost point of view. The whole justification for computers really is the information you get from them. We know things now we never knew before.

Q About the operation of your bank?

A About the operation of our customers, about the operations of our bank, about the whole works. It has been extremely profitable just knowing what we know about what is going on.

CROSS-EXAMINATION

BY MR. MEYNER:

* * * *

[fol. 373] Q Why haven't you gone more actively over into the Easton area?

A Because we are repairing a lot of fences in the Bethlehem area.

Q Is there a potential—are you considering potentially going into other areas more extensively?

A Well, I think we are growth-oriented. We want to expand our area of influence. I don't see how anybody could think rationally—sit in Bethlehem and not want to go to Easton and Allentown at some time in the future.

Q How about Warren County?

A I couldn't comment on that. Right now we are not allowed to.

Q Well, if you learned that there was great industrial development in Washington County such as the location of the Hoffman-La Roche plant, a development of [fol. 374] some 5,000 acres along the Delaware just north of Phillipsburg, and a similar development in Warren County, would you be anxious to get that business?

A We would go after it. We would be anxious to get any business we can from any place we can get it.

Q You have just been there since February and you are trying to tighten up your own market and develop it more intensively?

A We have been relocating a couple of branches and building a couple of new branches. We only have so many resources to go around.

Q In preparation for this appearance here did you have occasion to go through your files and analyze the addresses of your depositors?

A No.

Q You are the chief executive officer, are you not?

A Yes, sir.

Q And your knowledge depends upon what reports you get on weekly conditions?

A Daily.

Q Daily conditions?

A Yes.

Q So that you can't tell whether you have one or a hundred accounts in Warren County?

A No. I know what is coming in. I know what is going [fol. 375] out. I know significant account balance changes and this sort of thing.

Q This is over a certain amount, isn't it?

A Well, I think the cut-off is $5,000 or $10,000.

* * * *

[fol. 376] Q And you do have an interchange of these workers?

A Yes, sir.

Q What do you regard—are you familiar with the standard Metropolitan statistical area?

A Yes. I believe it goes over to the west of Allentown to the Delaware River, if we are talking about the same area.

Q Do you believe that is a socially and economically integrated area?

A I would say it is, but it is not nearly as much as one might suppose. It is very difficult to analyze that. It seems as though the three cities, Bethlehem, Easton and Allentown, have developed pretty independent cultures, and people do cross lines, and so forth, and it is integrated socially and economically but not nearly to the extent that you might guess. I think it is moving in that direction.

Q It is moving eastward?

A No. I think the three areas are getting closer and closer together all the time.

Q You include Phillipsburg in this Easton area?

A I have never included it. I know in the statistical [fol.

377] reports I have seen it in the area. They have included Warren County.

Q How long have you been in the Bethlehem area?

A How long have I lived there? Since January, 1967.

* * * *

Q You don't know the Warren County area very well?

A No, sir, I do not.

Q And you have made no present plans to move in there aggressively, as you describe certain banking activities?

A No, we have not.

[fol. 378] Q But that doesn't preclude the possibility that you will?

A No, sir. If business and people are there and we can be there, we will be there.

Q With respect to personnel, would you venture an opinion that a forty million dollar bank would be better able to attract personnel than a twenty-two million dollar bank?

A I couldn't say that. I have seen it—I think it depends on who is running the bank. I think that is the long and short of it.

Q You don't know the situation with respect to these two banks that are merging?

A No, sir, I do not.

Q So you can't venture an opinion?

A I could not.

Q Whether one alone or the two individually or as a merged bank could do better?

A No. I don't think it is the function of size whether you can attract people or not. I think it is a function of whether the people who are running the bank provide an environment for good men to work in.

Q And, of course, salary, too?

A That is not as important as a lot of people think. It is important. It is something not to be disregarded.

[fol. 379] Q There is no doubt that salaries have been on the increase in banking as well as in other areas?

A Well, if you want good people you have to pay for them and there is a great economy in having a good man.

Q You said that a computer service essentially enables you to know more about your bank. Wouldn't you say that another chief advantage is not so much in saving dollars and cents but you do save labor?

A No. I don't think you save labor. They say, the salesman, he will tell you that you will save ten percent of your labor force, and what I have seen happening is we are losing ten percent and hiring another ten percent so we are about at a standoff, and salary-wise I don't think we are as well off as we were before.

Q If you go into one of these premises with an impregnated check you can save labor, can't you?

A Oh, yes.

Q That is an aim of computerization, isn't it?

A Yes.

Q So you do save labor if you do it that way?

A Yes, you would, but I don't think—as I said, I don't think this is a big factor.

Q Salesmen have a way of overestimating what you can save?

A I have found that to be true, yes.

* * * *

[fol. 380] Q Could you say that you know of businessmen in Phillipsburg area who do banking in Phillipsburg but have given you some trust business?

A I know that to be true.

Q And you are pushing the trust business right now?

A Yes, sir, we are.

* * * *

[fol. 381] Q Isn't it true that many merchants who are moving ahead in business from a very small status find it necessary to get into the hundred to two hundred thousand dollar category in credit?

A I would not comment on that. I think it might be a trifle high.

[fol. 382] Q But isn't it true that the function of a bank in serving the community should be to meet the credit needs of the small merchant and small manufacturer?

A I can't see the sense in being in business if you don't do that.

Q Can you conceive of a situation where it would be better for a bank to double its lending limit?

A Well, I guess it would be better from the point of view

that there wouldn't be as much work in lining up correspondents. That would be burdensome if every time you had a loan you had to go and find somebody to help you out with it.

Q Don't you think that the customer would rather deal with one bank rather than two or three?

A From the customer's point of view, it is not absolutely necessary that he know. He would still be dealing with only one bank, the lead bank would take care of all the paper.

Q So far as signing the notes, he would have to know that, wouldn't he, if there was a corresponding bank?

A That is true.

Q So he would know?

A Yes, he would know.

* * * *

[fol. 383] Q Do you have a free rein in selling people on the idea that they deposit with you as contrasted with other institutions?

A No, no. I think that anything that is equity-oriented today has a very definite advantage over us in the minds of many people.

Q And in your experience in Bethlehem where would you say you are getting—where would you say you find other people seeking to get this dollar that you would like to get in a time deposit or a demand deposit?

A Are we finding it, yes.

Q Where?

A We have savings and loans in the area. We have brokerage houses in the area. We have insurance people, mutual fund salesmen. There are people representing every conceivable financial intermediary working in our area all the time, sure, and, as I said, I think there is a very definite tendency for the average investor, if you will, to lean towards equity, towards the stock market and towards mutual funds.

Q The man who has a dollar to put away has become a bit more sophisticated?

[fol. 384] A He is not only a bit more sophisticated but he has become a bit more concerned about the purchasing power of a dollar which seems to be a legitimate concern in view of what is happening.

Q And there is the mutual fund salesman and the stock salesman?

A Yes, essentially, and I think it has been a telling argument. I think that they have done well.

Q And you have seen funds move away from deposits into these areas?

A And there is very little you can do to stop it. I don't see that there is much that you can do.

Q Now, so far as putting the money out, are there agencies that are anxious to make loans to people that you would ordinarily serve?

A We see it from the personal loan companies and from–

Q This is small loan companies?

A Up to a thousand dollars, savings and loan associations we see it from.

Q You mean they are moving into your area and making a considerable number of loans on homes?

A Well, let's say they have been there for a long time, and some of them in recent years have become more aggressive in their policy.

Q Wouldn't you say, for instance, that the Valley [fol. 385] Federal Loan out of Easton has done a lot of business in your neighborhood?

A They have done a lot of business.

Q More aggressively than some of the banks or some of the other institutions?

A Well, I must admit that I really don't pay much attention to competitors. Our whole philosophy in our bank is let them do what they will. We have a job to do in serving the public, and if we do that right we will get all the business we can handle, so we don't worry about what others are doing, so I don't go out and study competitors. I don't even look at their statements half the time. They come in and I turn them over to the comptroller and I am done with it.

Q Wouldn't you worry if an insurance company with a commercial and industrial loan department that loans up to two million dollars and is catering to small business comes in and approaches a customer of yours for a $200,000 loan?

A Well, if that happened I would be concerned, but I have no knowledge of that type of thing happening, and a lot of what they want–the insurance company is interested essentially in the capital market. We are not. We are interested in the money market. We can't afford to go out that far on

security structure. We have to stay in a [fol. 386] little bit shorter, so that a lot of it we welcome. In fact, we oftentimes have construction mortgages and turned the permanent mortgage over to insurance companies and are very glad to have them there.

Q But they are moving into these areas from time to time?

A I have not seen it. They have not disturbed us.

* * * *

[fol. 387] Q In other words, you were a step ahead of them?

A We could not care less.

Q But it is a problem once they are in with an automobile company for a bank to try to replace them, isn't it?

A Yes, unless you can offer them something they can't, and what we do is offer them competency in handling these things.

Q These finance companies do the same job a bank does, don't they?

A Yes, but in the servicing area end of it, this is where [fol. 388] they sometimes fall down, and we come on strong. I don't know whether this is true in industry, whether other banks do this. I don't know, but I know in our case this has been a very, very strong selling point throughout, and we actually have dealers who are with other banks calling us and asking us to handle their business, and in several cases we have refused. We don't want them.

Q Credit cards used by a merchant are a method of extending credit. That is a service that you could offer?

A Yes. Yes, it is.

Q So it is a business similar to yours?

* * * *

[fol. 389] CROSS-EXAMINATION

BY MR. WATERS:

Q Mr. Jones, you referred to one bank in Philadelphia that you consider a serious competitor in the trust business.

A Girard Trust.

Q That is the Girard Trust you have reference to. Do they have a man on the road soliciting trust business?

A Yes.

Q In Bethlehem?

A Bethlehem, Allentown, Easton.

A Bethlehem, Allentown, Easton. Now, you indicated you feel they weren't such a serious threat to you as they were in the beginning.

A No. That is correct.

Q That's in Bethlehem.

A That is correct.

Q How about their operation in Easton?

[fol. 390] A They are tough in Easton.

Q You feel they do a good business in Easton?

A I know they do a good business in Easton.

* * * *

[fol. 391] Q Based on your experience in the banking and consulting work, how would you view the management of a bank that had an eighty-year-old president and a seventy-year-old executive vice president?

A I would prefer not to comment.

Q You indicated that you are presently in the process of mending fences in Bethlehem.

A Yes, sir.

Q Where do you view the potential for expansion of your banking activities, geographically?

A As far as we can go.

Q In any direction, as to any time?

A Any place we see a potential, and we are allowed by law to go in that area, we shall be there.

Q Well, are you allowed to, say, establish a [fol. 392] branch in Easton?

A Yes.

Q Would you consider establishing such a branch?

A Yes.

Q Are you considering the possibility of establishing such a branch?

A I would prefer not to comment on that.

MR. WATERS: I have no further questions.

* * * *

CROSS-EXAMINATION

BY MR. ROACHE:

* * * *

[fol. 393] Q What is your lending limit?

A Seven hundred and ninety thousand. That's if you include in that the undivided profits. Without that it is six hundred and twenty-five thousand.

Q To a small bank, the size of Phillipsburg National and Second National, do you think lending limits would be important to them, if they were trying to build a C&I loan business?

A I should think it would be.

* * * *

[fol. 394] Q Do you think a merger of two banks the size of Phillipsburg and Second National, with increased capital resources and increased personnel, could do a better service for their community?

A I think this is axiomatic.

* * * *

[fol. 395] REDIRECT EXAMINATION

BY MR. WEINBAUM:

Q Mr. Jones, if there are costs savings in connection with a computer, for instance, on something like processing of demand deposit accounts, do you pass this—or would you pass this savings on to the customer—

A We don't.

Q —in the form of lower service charges?

[fol. 396] Q No, we don't.

Q You do not?

A No, because our service charges are on the low side now.

Q You indicated, Mr. Jones, that, in your opinion, it would cost a hundred thousand dollars a year to operate a trust department of satisfactory—

A In my judgment, this is what it would require to do the job right. I know some that have budgets less than that, and they are not doing the job right, in my opinion.

Q What kind of a bank, in your opinion, would be able to

allocate a hundred thousand dollars to the running of such a trust department?

A The size of the bank?

Q Yes, sir.

A Well, it is difficult to relate, but I would—Anything I said there would be misleading. I don't know. I could show you examples all over the place on that.

Q This hundred thousand dollars would include the salaries and administrative expenses?

A This would be total cost, this would be space cost, and personnel.

Q Can you relate this figure to the amount of trust business which a bank would have to be doing?

A Well, I think that to make money—or to break even, [fol. 397] let's say to break even—today you should have somewhere in the vicinity of maybe about $30 million, 25 to $30 million in trust assets. This is personal. Corporate, that really isn't very profitable at all. But I would say personal, this is what you would need.

Q A total of approximately $30 million—

A I would say 25 to 30, in that range some place.

Q Mr. Jones, in your experience, how much money do you think it would take to hire an experienced trust officer in this part of the country, that is, the Lehigh Valley area, which encompasses—

A Fifteen to twenty thousand dollars.

Q Excuse me?

A Fifteen to twenty thousand dollars a year.

Q Is this irrespective of the size of the bank?

A Pretty much. Most of your demand for really good trust officers—there are very few you will get to go into a small department. Most of them would want to be in a larger department, I believe.

* * * *

[fol. 398] Q This figure you just gave of 15 to $20,000, would that apply to a situation where a man would not be coming into an already-existing full-time trust department, or doesn't it make any difference?

A I wouldn't see where it would make any difference. If the man is an experienced man, if he has been around and knows the business—it is very difficult to get anybody that is

really good to start a trust department, because the average time to break even from the start of a trust department—until you break even is somewhere around seven to eight years. And usually long before that the directors of the bank become very much upset. They are not making money, and not understanding the trust function, make life unbearable for this new man and invariably he leaves. I have seen this pattern over and over and over again. I think that anybody taking a job like that ought to have a ten-year contract, and explain that they are not going to make any money for seven, eight years. This is a very difficult area.

Q And that would be building up the trust department to the $30 million which you spoke of?

[fol. 399] A Yes, if he was a good man he could do it in seven to eight years. He should be able to do it.

Q And by an experienced man, can you explain briefly the type of experience.

A Well, if I were doing it—that's all I can say; how anyone else would do it, I don't know—the only one I would hire would be an estate planner. I would farm out the rest of my work. I would get investment advice outside and get a lot of other advice outside.

Q So that your trust officer would be essentially an estate planner.

A An estate planner. He would be a new business man. That's your problem when you don't have any business. You have to get some business. So hire a new business man.

Q In your opinion, Mr. Jones, how much money would it cost a bank to hire a competent lending officer, a commercial lending officer?

A A commercial lending officer, a good one, twenty to $25,000.

Q In your experience, Mr. Jones, are there many banks in the fifteen to $25 million category that have trust or lending personnel, experienced personnel, such as you have described?

A There aren't many. There are some, but not many.

Q And can you explain the type of experienced [fol. 400] person you would seek for the commercial and industrial lending area?

A I would go after a man that had time on a lending desk some place.

Q In a bank?

A In a big bank. I wouldn't go after anyone with small bank experience.

Q Might you do this through a correspondent?

A Well, correspondents don't like you to pirate their people. But that's what we did to get ours.

Q As far as a small bank being able to develop its commercial and industrial lending activities, Mr. Jones, in your experience, have you seen small banks with small lending limits—say, in the area of a hundred thousand dollars—increase their commercial and industrial loan activities significantly?

A Yes, I have seen them do it, yes.

* * * *

[fol. 401] Q And, Mr Jones, how do these banks go about doing this?

A Well, I think the fact that they have established lending policies that accommodate small businessmen, merchants, small industry in their community—I think the Pocono Mountain area is a good example of that, where we have had a great deal of growth in industry up there, the banks have—relatively small banks have done well. It is not that they have gone out and solicited, or had an especially aggressive policy, just the fact that the business grew up around them and they were smart enough to accept it, to set up their policy to accommodate these people.

* * * *

[fol. 402] Q Mr. Jones, does the small businessman have as many sources of credit available to him as the large companies?

A No.

Q And the small businessman—say, the man with business assets of $250,000 or under—in your opinion, would he be basically turning to local banking institutions for his credit needs?

A I believe that. I think that when you are talking about the small businessman, or the local type of customer, the best percentage of this type of lending is done on the basis of character rather than figures. So I think that he has access to as many banks as his reputation spreads to, or his character spreads to. So I think that the small bank is the one that accommodates this type of borrower, usually. I am sure some of

them go elsewhere. But in most cases it is local for the small borrower.

Q Mr. Jones, can you state whether or not your [fol. 403] consumer lending—most of it—is direct or indirect lending?

A Most of it is direct lending.

* * * *

[fol. 415] WILLIAM F. JONES, sworn.

DIRECT EXAMINATION BY MR. AUSTIN:

Q Would you please give your home address, Mr. Jones.

A 158 Shawnee Avenue, Easton, Pennsylvania.

Q By whom are you employed?

A The Easton National Bank & Trust Company.

Q In what position?

A President.

Q And how long have you been in that position, Mr. Jones?

A Since July 1961.

* * * *

[fol. 417] Q What were the total assets as of this same date?

A Seventy-six million.

Q How many banks are located in Easton?

A Three.

Q Will you name the other two.

A Lafayette Trust Bank and Northampton National Bank.

Q Is your bank the largest bank in Easton?

A Yes it is.

Q How far is your bank from the other two banks in Easton?

A About a block.

Q What is the approximate population of the City of Easton and immediately-adjacent townships and boroughs?

MR. MEYNER: I object unless we know what the adjourning boroughs are.

Q What is the approximate population of the City of Easton, Williams Township, Forks Township, Palmer Township, Glendon Borough, West Easton Borough, Wilson

Borough, Tatamy Borough and Stockertown Borough, approximately.

A Approximately 60,000.

THE COURT: Is that a combined total?

THE WITNESS: Yes.

Q How far is your bank from the main offices of the defendants' banks, the Phillipsburg National Bank and the Second National Bank of Phillipsburg?

[fol. 418] A I would say within a mile.

Q Do you have any branch offices?

A Yes we do.

Q How many, sir?

A We have four branches.

Q Where are they located, please?

A One on the south side of Easton, one on College Hill Easton, one in Palmer Township and one in Wilson Borough.

Q Will you please briefly describe the various services offered by the Easton National.

A We are a full-service bank. We have all sorts of loans. We have a trust department, safe deposit facilities. I think we have practically every service available to us.

Q What are some of these types of loans that you have reference to?

A Commercial loans, mortgage loans, installment loans of all types.

Q And what type of deposits do you accept?

A Savings deposits, certificates of deposits and demand deposits, of course.

Q What is the current rate of interest Easton National pays on passbook savings?

A 4 per cent.

Q What is the current rate on certificates of deposit?

[fol. 419] A 5 percent on certificates of a thousand dollars or more with a six months' maturity and 5-1/2 per cent on a hundred thousand dollars or more.

Q And what was your rate on passbook savings as of the year-end 1967?

A 3 per cent.

Q And what was your interest rate on certificates of deposit as of the year-end 1967?

A We had 5 per cent certificates available, but they were for a longer term and a greater dollar minimum.

Q Approximately how long has Easton National been paying those rates after the year-end 1967?

A On passbook savings I believe it was approximately from around 1959. I can refer to my records. I think I have that.

Q Good, if you would, please.

A 3 per cent was paid from October 1, 1959 until July 1, 1968.

Q Do you recall approximately when Easton National was legally authorized to increase its rate on passbook savings and C.D.'s to the present level?

A July the 1st of 1968—we were authorized—I beg your pardon. We were authorized to go to a 4 per cent level several years ago and the regulations permitted us to, but we chose not to increase our rate.

[fol. 420] Q Do you advertise your certificates of deposit?

A Yes, we do.

Q Did you advertise your C.D.'s prior to the date interest rates were raised?

A No, we didn't.

Q Why did you not advertise them, Mr. Jones?

A We felt that that money was costing us too much, and we weren't in a position to pay the higher rates.

Q Have your time deposits increased sharply since the rate change?

A We have increased our time deposits, yes.

Q By approximately what amount in terms of total dollars?

A If I may refer to some records. On June 30, 1968 we had 68,700,000 in total deposits. Do you want time deposits?

Q Time deposits and certificates of deposits.

A All right. Total time deposits at the end of June '68, we had 42,800,000 in total time deposits and on September the 11th of '68 we had 44 million, almost 800,000.

Q Was this approximately $2 million increase attributable to new money coming into the bank or from some other source?

A Most of it was new money. However, we did have some lateral movement, some lateral movement from savings to [fol. 421] certificates of deposit, but—well there is new money, of course.

Q Have you been able to offset the increased expenses of higher interest rates that you are now paying?

A Not in entirety, no.

Q What efforts, if any, have you made to offset the increased expenses that you were going to have to pay because of your increased interest rates on time and savings deposits?

A We have increased our loan rates, our commercial loan rates. We have increased our mortgage loan rates, and we have attempted to improve our investment portfolio.

Q Mr. Jones, what were the circumstances under which Easton National recently raised its passbook savings rate to 4 per cent?

A One of the local banks started advertising for certificates of deposit and they reduced the maturity date on the amounts. Another bank then increased its passbook savings rate. Meanwhile, we had done nothing. Then because of the competition from the other banks we increased our passbook rate and also offered certificates of deposit.

Q And which bank is this that you were speaking of that initiated the interest rate increase?

A The Lafayette Trust Bank started the—they made the first move on the certificates of deposit and then the Northampton National increased the passbook rate.

[fol. 422] Q Do you know what rates of interest the defendant banks are paying on passbook savings and certificates of deposit currently?

A I believe they are paying the same as we are. I believe they are.

Q Do you know what rates of interest the defendant banks were paying on passbook savings and certificates of deposit as of year end 1967?

A I believe it was three and a half percent on passbooks and I don't know whether or not they issued certificates of deposit.

Q Do you know approximately over what period of time the defendant banks had been offering passbook savings at three and a half percent?

A I believe they increased their regular savings account interest from three to three and a half in January of 1962. I am not sure of that, but I believe that is the date.

Q When were their rates increased approximately—rates on passbook savings and certificates of deposit?

A I believe it was in July of 1968.

Q Do you know whether other commercial banks in the

City of Phillipsburg and the City of Easton also increased their rates at about the same time?

A Approximately, within a month or two of each other, I would say.

[fol. 424] Q What approximately was the size of Easton National's Trust Department, measured by total amount of trust assets, as of year end 1967?

A In personal trust accounts we had approximately twenty-five million, and in corporate, another twenty million, perhaps.

* * * *

[fol. 425] Q During the past five years, Mr. Jones, has any banking service been requested of Easton National Bank by a customer which you were unable to provide, either through Easton National's own facilities or through your correspondent banks?

A Not to my knowledge.

Q Do many of your customers buy more than one of the services offered by Easton National, Mr. Jones?

A Yes.

Q Do you regard this as a valuable service or valuable feature of your banking business?

A Yes.

Q Do you actively encourage your customers to take advantage of all these services?

A We do.

Q As a matter of practice, Mr. Jones, does Easton National give the same consideration to a non-customer, in [fol. 426] terms of granting loans, as it would give to a non-customer?

THE COURT: Read that back, please.

(Question read.)

MR. AUSTIN: Strike that. I will repeat the question.

Q As a mater of practice, does Easton National give the same consideration to a non-customer, in terms of granting or denying loans, as it would give to one of its own customers?

A No, not in all cases.

Q Are you generally familiar with the geographic sources of your bank's business, Mr. Jones?

A Fairly.

Q In preparation for your appearance here today, did you

make any effort to more intimately familiarize yourself with the sources of your bank's business?

A Yes, I did.

Q And how did you do that, sir?

A We have certain officers in charge of certain phases of our bank and I asked several of them to survey their responsibilities, with the idea of telling me how much of our business was out of our given area.

Q And what do you mean by out of your given area, Mr. Jones?

A I defined our area to them as including Easton and [fol. 427] the immediate vicinity, the towns and boroughs and townships surrounding Easton, and Phillipsburg, and the surrounding communities in Phillipsburg.

* * * *

[fol. 432] Q Incidentally, what was the date of that review of accounts, Mr. Jones?

A September the 13th—the 12th and 13th, I believe Thursday and Friday.

Q Of this year?

A Of this year—of this month.

* * * *

[fol. 449] Q Mr. Jones, based on your survey of accounts on commercial and industrial loans, are you able to state the total number of commercial and industrial loans originating from within Easton and environments and Phillipsburg and environs?

MR. MEYNER: If he will designate those municipalities.

THE COURT: All right.

Q Are you able to give information by [fol. 450] preliminarily spelling out what the municipalities are that are included in Easton and environs and Phillipsburg and environs.

A Yes.

THE COURT: I don't know exactly what counsel had in mind. I think he wanted to have a breakdown of the number of accounts originating in each municipality. Is that correct?

MR. MEYNER: No. I at least want him to designate the municipalities, because if you take post offices that is different than plaintiff's allegation of territory environs.

THE COURT: Would you indicate the municipalities.

THE WITNESS: Yes. Easton, Wilson, the Borough of Wilson, Williams Township, Bethlehem Township, Borough of Glendon, Palmer Township, Forks Township, Tatamy, Stockertown, Phillipsburg, Alpha and Hopatcong.

MR. MEYNER: If you Honor please, I don't think that one was in the territory.

THE COURT: The Township of Bethlehem, as I recall, was not within the area designated as Easton and environs and Phillipsburg and environs.

MR. AUSTIN: That is correct, you Honor, and considering that any bias in the information–

THE COURT: That is true. It would operate [fol. 451] against the Government for an enlarged area.

MR. AUSTIN: So we are willing to have the witness testify in accordance with the area that he indicates the survey covers.

THE COURT: All right.

(Question read back.)

MR. AUSTIN: May I modify the question?

THE COURT: Surely.

Q Mr. Jones, based on the municipalities you just enumerated that were covered in your survey of commercial and industrial loans, are you able to give us the total number of such loans originating within the area you described?

A I have had it prepared in my survey of loans outside of the area, and I would have to do some arithmetic in order to define the number within the area.

Q May I rephrase the question. Mr. Jones, based on your survey of commercial and industrial loan accounts originating in the cities and townships you just enumerated, are you able to tell the Court the number of such loan accounts originating outside of the area you just described?

A Yes.

Q Would you please give us the total number of such accounts.

A Of the total number of loans, 1,152, according to our [fol. 452] survey we have 103 outside of the area, or 9 per cent of the number, and of the dollar amount $7,394,000 total, and outside of the defined area 510,000 or 6.9 per cent.

Q Do you know the number of commercial and industrial loan accounts originating within the cities of Allentown and Bethlehem?

A Yes. We have 25 of the total number or 2.2 in Allentown and Bethlehem.

Q Are you able to state the number of loan accounts originating in Nazareth and Bangor, Pennsylvania?

A This survey includes Nazareth and Bangor, but it too includes other areas adjacent to Allentown and Bethlehem. In any event, we have 16 loans or 1.4 per cent totaling 95,000 or 1.3 per cent of the dollar amount.

Q Included in that number of commercial and industrial loan accounts outside of your defined area, which I believe was 103, are you also including the 25 accounts from Allentown and Bethlehem and the 16 accounts from Nazareth and Bangor?

A Yes.

[fol. 453] Q Would you please state the dollar amounts—the dollar value of the twenty-five loans originating out of Allentown and Bethlehem?

A $141,272.

Q Would this $141,272 be a percentage of your total commercial and industrial loans of $7,394,028?

THE COURT: Read that question back. I am not sure I heard it correctly.

(Question read.)

THE COURT: Stated otherwise, do you mean has he included that in his total figure? Is that what your are talking about?

MR. AUSTIN: That is correct. I want to make sure that—Well, actually the question was a little confusing, your Honor. I think I'd better strike it and ask it in a different manner.

THE COURT: Go ahead.

Q Are you able to tell us what percentage the twenty-five commercial and industrial loan accounts, originating out of Allentown and Bethlehem, would constitute of the total dollar value of your commercial and industrial loans at the bank?

A 1.9 percent.

Q And, Mr. Jones, did your survey involve a complete review of all commercial and industrial loan accounts at the [fol. 454] bank?

A Yes.

THE COURT: Did your survey encompass or indicate any trend toward these areas more distant from your bank?

THE WITNESS: I don't believe so. You mean over the past several years has there been an increase in loans outside of our defined area?

THE COURT: Yes.

THE WITNESS: I don't know of any trend, your Honor.

THE COURT: Go ahead.

Q Would you please state for the Court, Mr. Jones, precisely what types of loans are included under the heading "commercial and industrial loans"?

A These would include loans to industry, loans to various types of businesses, it would be unsecured loans to individuals, secured loans to individuals, as well, and education loans. The education loans are carried here because they are not reduced until such time as the student graduates and begins to pay back the loan. We only get the interest and get no repayment of this loan until the student has finished his education.

Q Are you able to tell us. Mr. Jones, the total number of mortgage loans at your bank originating outside of [fol. 455] the area that you have defined for us?

MR. MEYNER: I object unless we have the area on this, because as I have tried to examine these papers, each one of these areas seems to be a little different.

THE COURT: I suggest that we let him state his answer and then ask him the municipalities.

You may answer.

THE WITNESS: I don't get the question.

THE COURT: Read the question back.

(Question read.)

A Yes, eighty-three of the total of 1,740.

THE COURT: And in what municipalities?

THE WITNESS: These include the municipalities I have just mentioned a moment ago.

THE COURT: Does that include also Allentown and Bethlehem?

THE WITNESS: Yes, it would include Allentown and Bethlehem. The areas exclusive of those that are in the socalled defined area of Easton, Phillipsburg and vicinities.

THE COURT: Thank you. Go ahead.

Q And what, Mr. Jones, would be the dollar value of these eighty-three mortgages located outside of your area?

A $1,021,372 or 5.7 percent of the dollar volume.

[fol. 456] Q And what is the total dollar volume of mortgage loans at Easton National?

A $18,046,000.

Q Is the information you have just recited the result of a complete review of all the mortgage accounts at Easton National?

A Yes, it is, to the best of my knowledge.

THE COURT: Counsel, I am going to interrupt you to make an observation. It may not be pertinent, but I am throwing it out for counsel to consider.

I am not certain yet that the percentages, as given, would present the entire picture—that is, as far as an area of competition is concerned. It occurred to me that those percentages, together with comparative population, would be helpful.

To illustrate, you have a concentration of population in Easton. Some of the smaller outlying communities have a very low percentage of population compared to Easton. We are speaking of an area in which there is competition. I don't think we get the entire picture by a mere presentation of the dollar volume of investment there as compared to the total volume dollar investments of the institution. I used the term "investment"—loan accounts.

By way of further illustration, you can have a [fol. 457] bank in a large city, surrounded by suburbs. Because of the demand, by reason of population and the nature of business, it is not quite as great in the suburban as it is with the population where the business is concentrated. That in and of itself would not necessarily rule out the suburban market.

I just throw this out for your consideration.

MR. AUSTIN: We recognize this, your Honor, that, in fact, percentages of business, in terms of the geographic origin of that business, would not be the sole criterion pursuant to which your Honor must judge the relative geographic market in his final determination.

However, we certainly contend that it is one measure of the degree or intensity of competition insofar as it defines mathematically, or at least arithmetically, the areas from which a given bank derives the vast bulk of its business.

THE COURT: I notice you stated there were twenty-five

loans placed in Allentown and Bethlehem, a dollar amount of $141,072–I think you heard it as 272–that is not material. But a percentage of 1.9 percent of the total of the bank's business in that type loan.

MR. AUSTIN: Excuse me, your Honor. That 1.9 [fol. 458] percent, I believe, your Honor, was a percentage of the percentage of business done outside of the area. It was not a naked percentage of the total business, as I recall.

THE COURT: Maybe you are correct. But that isn't even too material to the question I have. The fact is–

MR. MEYNER: It is the total number of their commercial loans.

MR. AUSTIN: The 1.9?

THE COURT: That is the way I had it in my notes. I could be in error. But in drawing the lines of the market area, I would have to take into consideration demand in Allentown and Bethlehem, and needs there. Then evaluate that 1.9 percent in connection with that.

The mere fact that the percentage of the total of the bank's business in that line is only 1.9 percent, standing alone, doesn't indicate too much. Are you in agreement?

[fol. 458] MR. AUSTIN: Standing alone yes, your Honor. It does not.

THE COURT: That is what I am driving at. If you only had–you may have a bank operating, serving a community, serving a very large community as well as a community of 70 or 80 persons, and it may be getting the major part of the business of that community, yet when described in terms of percentages of the total of the bank's business it might be insignificant.

MR. WEINBAUM: Might I make one additional comment, please?

THE COURT: Surely.

MR. WEINBAUM: We do believe, however, that as we have stated several times in the past, where a bank gets business we do not believe is necessarily the appropriate means of defining a market, and I think that if there is any agreement between the defendants and the Government and the Comptroller I think there is no dispute about that. We recognize that the banks get–the banks in Phillipsburg and Phillipsburg-Easton do get some business all over this larger area, which the defendants and the Intervenor claim is the appropriate one. There is no denying that, but we feel that this is usually the

case, and we have emphasized, your Honor, there has to be some definition based on [fol. 459] where the effects will be considered to be most direct on people in a given area, and following that this 1.9 per cent of business from an outlying area may or may not have a significant effect on the people in the outlying area.

THE COURT: But I think I must be concerned with the entry of the bank into the market in determining the issue of concentration, and I will agree with you that the mere fact that accounts are placed with a bank in a certain area is not in itself determinative of a relevant geographic area, but the number of accounts, the extent to which the bank is serving the needs of the people there is pertinent on the issue of competition with other banks also serving the same areas. The competition arises, as I see it, when the bank reaches out towards the customer and the customer finds the bank's facilities are satisfactory to him. If that is done on any significant scale, the bank is then a competitor in that area.

MR. WEINBAUM: That is the point. The percentages, we believe, do determine whether it is done on any significant scale.

THE COURT: It is evident—but I only want to interrupt to make these observations so you can give them consideration. You might after giving [fol. 460] consideration to them decide that they are not particularly helpful.

MR. WEINBAUM: We appreciate them.

MR. MEYNER: I just want to state that Mr. Weinbaum doesn't have any authority to speak for the two banks. He mentioned that we agreed on something. The only thing we agree on is that it is the standard metropolitan statistical area, 15 miles radius of Phillipsburg, to include Bucks County and the municipalities in North Hunterdon County.

THE COURT: I would like to make another observation. It would seem to me that the further out from its home base the two banks in Phillipsburg go in reaching for business, taking care of the needs of the customers, the wider the geographic area of competition may be, because it brings—for instance, I don't know how the banks do their business, but we will say that they do business with customers in Allentown and Bethlehem. These other banks are doing buuiness there. They are in competition, whether the degree of competition is significant or not is another matter, but the greater the area in which any one of these banks functions

the greater the number of competitors. As you widen your geographic area, you are bringing more and more banks into the picture.

[fol. 461] MR. MEYNER: We won't quarrel with that learned statement, your Honor.

THE COURT: I wouldn't call it a learned statement. Bear in mind I am finding my way through this case with difficulty and I'm not at all certain that the observations I make as we go along are even particularly helpful or reflect any sound graphs of the case, so I have to ask the indulgence and patience of counsel.

BY MR. AUSTIN:

Q Mr. Jones, you indicated that the total number of mortgages on the books at Easton National was 1,740, I believe. Has Easton National over the past ten years had occasion to purchase mortgages from any other financial institutions or mortgagees which in turn are included in the 1,740 mortgages on the books?

A I am not sure that it was within the past ten years, but our bank has purchased 78 mortgages from other parts of the country, and I speak of the far West and deep South in this group that we have purchased. We have on our books remaining 78 loans so purchased. I don't know what the total was originally, but we have not purchased any to my definite knowledge within the last seven years.

Q To what extent, then, do you regard your bank as [fol. 462] being in competition in the areas from which these loans originated?

A Are you speaking of the purchased mortgages?

Q Yes, sir.

THE COURT: He says he has not purchased mortgages in the last seven years. Did I understand you to say you had not purchased mortgages in the last seven years?

THE WITNESS: We have not purchased mortgages within the last seven years. That is true.

MR. AUSTIN: I said the last ten years.

Q To the best of your knowledge, these mortgages that are on the books were not purchased within the past ten years, is that your statement?

THE COURT: Let me get something straight. How are we using the term "purchase"? Sometimes an institution places a

mortgage and sells it to another institution, so we speak of mortgages that are purchased. We can also speak of mortgages as being purchased when the loan is placed directly by the mortgagor.

THE WITNESS: If I may clarify that?

THE COURT: Go ahead.

THE WITNESS: On some occasions banks do not have sufficient loans on their books and they find [fol. 463] that there are no local sources to acquire such loans, mortgage loans, so they purchase these mortgages that were originated–that they did not originate–from other parts of the country.

THE COURT: Is that the sense in which you were using the term "purchase" of mortgages when you answered counsel's question?

THE WITNESS: Yes.

(Question read back.)

A I think my answer was to my definite knowledge within the last seven years we purchased no such loans. I speak only of seven years because that is when I joined the bank. I don't know when these other loans were purchased, but they were purchased prior to seven years ago. They are in states such as Arizona, Michigan, Florida, and we did not originate those loans. We purchased them from the originating banks in those areas. There remain on our books 78 such mortgages with outstanding balances of $160,000.

Q Mr. Jones, based upon your review of accounts, are you able to tell the Court the total number of consumer installment loans originating outside of the geographic area which you have previously defined for us?

MR. MEYNER: I object, your Honor, because I have had a chance to look this over and apparently this was based on a geographic area–it looks like [fol. 464] Easton, Phillipsburg post offices rather than the geographic area we are talking about, so I think to expedite it we can ask about what area he surveyed, but it's not the same area he had in the other two.

MR. AUSTIN: May I rephrase the question?

THE COURT: Yes.

Q Mr. Jones, did you do a survey of your installment loans at Easton National?

A Yes, we did.

Q And what geographic area–with what geographic area

were you concerned at the time of your survey of installment loans?

A My instructions to the heads of each of these departments were to include the Easton area and the Phillipsburg area as Easton proper, Phillipsburg proper, Wilson, Palmer and those other areas that I have already defined as the Easton area and the Phillipsburg area. Now if one area or one department did include in one case here—I think he included Bethlehem Township, perhaps in another survey it did not include Bethlehem Township, but generally speaking these areas that I have defined as outside of the trading area exclude Easton, Phillipsburg and the surrounding suburban areas.

Q Based on that survey, are you able to tell the Court the total number of consumer installment loans [fol. 465] originating outside of the defined geographical area?

A Yes, 715 accounts or 21.4 per cent of the total, and the dollar amount if you are interested in that is 1,678,000 or 22.4 per cent.

Q And as of the date of the survey, what was the total dollar value of all consumer installment loans on the books at Easton National?

A Dollar value of $7,495,000.

Q What was the total number of consumer installment loans on the books as of that day?

A 8,900.

Q Would you please tell us what particular types of loans were included under the heading consumer installment loans?

A It includes personal loans, automobile loans, direct automobile loans and indirect, home improvement loans, some mobile homes, and other strictly signature loans.

Q You mentioned automobile indirect loans. Precisely what do you mean by automobile indirect loans?

A We have several dealers outside of the defined area such as Belvidere, Riegelsville.

Q That is Riegelsville, Pennsylvania or Riegelsville, New Jersey?

A Riegelsville, Pennsylvania.

Where these loans from the automobile dealers [fol. 466] originate, those loans are considered indirect, outside of the area, but the indirect loans are not those that are originated by us or within our own bank.

Q May I ask this then–

A Excuse me. As differentiated from direct loans, direct loans originate by ourselves. Indirect loans originate from dealers of one sort or another.

Q To what extent, if any would direct loans be analogous to the discounting of paper or notes–the indirect loans–I am sorry.

A Indirect loans? I don't quite understand your question.

Q When you speak of indirect loans to dealers, is the manner in which the transaction, the purchase transaction is carried on similar to discounting a note, a note of a customer of the dealer?

A In effect, yes. Actually, the loans are–originate at a dealer. An individual purchases an automobile from a dealer. The papers are all prepared in the dealer's showroom. The note is signed at the same time. All the papers are delivered to us for discounting, the loan being on our books then as an indirect loan. It was taken by the dealer.

Q You mentioned, Mr. Jones, having a dealer in Belvidere, New Jersey, I believe.

[fol. 467] Q Do you discount dealer paper directly from this dealer?

A No, we do that through a correspondent in Newark.

Q Why have you adopted that procedure for discounting paper from a New Jersey dealer?

A I believe the law prevents an automobile dealer discounting papers outside of the state. Therefore, it is done through a New Jersey–

MR. MEYNER: I object, and I ask that it be stricken, your Honor. After all, I think what he means to say is that you have to have a license if you are going to sell paper.

THE COURT: Don't be concerned that I am going to accept any testimony by any witness as to what the law is.

MR. AUSTIN: I simply wanted to have him point out to the Court that there are restrictions.

THE COURT: You developed that line anticipating the plaintiff's position.

MR. AUSTIN: Thank you, your Honor.

[fol. 468] Q Mr. Jones, did you also do a review or survey of your trust accounts at Easton National?

A No, we did not.

Q To the best of your knowledge, Mr. Jones, do you derive any trust business from Phillipsburg and environs?

A Yes, we have some.

Q Do you derive any trust business from Easton and environs?

A That is the major share of our trust business, Easton and vicinity.

Q Mr. Jones, referring back to the totality of the information you have given us regarding specific categories of business, and the percentages of that business originating outside of your defined area, how do you account for the fact that the vast bulk of your bank's business in those categories does, in fact, originate from outside the area?

THE COURT: I don't follow you.

MR. AUSTIN: Strike the question, please.

Q Mr. Jones, referring back to all the information you have given us regarding mortgage loans, installment loans, commercial and industrial loans, and the geographic areas from which these various loans originate, how do you account for the fact that the vast bulk of the business in those categories originates from inside your defined area?

[fol. 469] MR. MEYNER: I don't believe this witness ever defined his area. He defined the area that counsel gave him to make a survey.

MR. AUSTIN: This is a part of the earlier dispute, when we indicated that Bethlehem Township, although not included in our relevant geographic market, was nonetheless included in his defined area.

THE COURT: Well, let's clear it up. We have got to move a little bit here.

Mr. Jones, what do you consider your area, if you can give any opinion on that?

THE WITNESS: Yes, I can. I think the bulk of our business is definitely derived from the Easton area, which includes the townships and boroughs surrounding Easton, and the Phillipsburg area, and the townships and boroughs surrounding Phillipsburg, to a lesser degree. The area from which we derive the bulk of our business is quite obviously the Easton area.

MR. AUSTIN: May I proceed, you Honor?

THE COURT: Yes. Go ahead.

Q Mr. Jones, have you ever adopted a program at Easton National specifically designed to gain for your bank a greater amount of business out of Allentown or Bethlehem, Pennsylvania?

[fol. 470] MR. MEYNER: I object. Leading.

THE COURT: Overruled.

A We have not aggressively sought business in Bethlehem or Allentown, or areas beyond our defined business area.

THE COURT: Is there any reason peculiar to policy of your bank, up to this time, which caused you to concentrate in the area that you have just defined in answer to a previous question? That is, as far as seeking business is concerned, aggressively seeking business.

THE WITNESS: Perhaps peculiar to the banking picture, we have an area in which we are doing business, and other institutions in other areas have an area in which they are doing business. And I daresay that if we sought business in Bethlehem or Allentown, or wherever, Bethlehem and Allentown, or whomever, may be seeking business in our area.

THE COURT: A friendly relationship, isn't there?

THE WITNESS: No agreement, however,

THE COURT: That is understandable.

I can appreciate the fact that I am going to have a real problem here in deciding the degree to which competition presently exists.

* * * *

[fol. 471] Q Do you do any advertising in search of new business, Mr. Jones?

A Yes, we do.

Q In what medium do you advertise?

A Newspapers, primarily, the local newspaper.

Q And what is the name of that newspaper?

A The Easton Express. And the local radio stations.

Q What is the name of the station?

A There are two stations, WEEX and WEST. We also advertise in the Allentown Sunday Call, because there is [fol. 472] a considerable circulation of that paper in Easton. It is the Sunday paper, the only Sunday paper serving the local area, to my knowledge.

Q To the best of your knowledge, do these newspapers or radio stations circulate or penetrate areas such as Allentown, Bethlehem, Bangor, Pensylvania, or Hackettstown, New Jersey, or Belvidere, New Jersey, or Hunterdon County, New Jersey?

A Well, very possibly, they do, but I would say that the

greater circulation is in the Easton area. And I believe the Easton Express has an office in Washington, New Jersey. But I believe the concentration of its circulation is in the Easton area more than it would be in Bethlehem or Allentown, because Allentown and the Bethlehem each have local papers.

Q Well, at what geographic area are you primarily directing your advertising, Mr. Jones, in either newspapers or radio?

MR. MEYNER: I object.

THE COURT: Overruled.

A To the area which we have defined as our trading area.

* * * *

[fol. 473] Q Mr. Jones, according to Plaintiffs' Exhibit 39, which shows the deposit ratios of all commercial banks in Phillipsburg-Easton, as of year end 1967, approximately sixty-two percent of Easton National's total deposits were [fol. 474] in time and savings deposits. How do you account for the percentage being at that level?

A Perhaps there are more thrift-minded people in the area. However, I think that most country banks have a percentage of time deposits that is not unlike that. When I speak of country banks, banks outside of the Federal Reserve cities.

Q Well, according to Government Exhibit 43 which shows the loan ratios of all commercial banks in Phillipsburg-Easton and environs, as of December 31st, 1967, Easton National had approximately fifty-one percent of its loan portfolio devoted to mortgage or real estate loans, while commercial and industrial loans constituted only 10.5 percent of total loans. How do you account for this balance in your loan portfolio?

A Time deposits or savings deposits are usually of longer duration in that they stay in the bank a longer period of time than demand deposits. And as a result most banks invest their time deposits in longer term investments, such as mortgages. And we have a greater percentage of our total deposits in time monies, and therefore we are going to put a greater percentage in long term investments, such as mortgages, as compared with demand deposits, which are subject to call, and those deposits go into shorter term investments or loans.

[fol. 475] Q Well, based on all the services offered by your bank, which you described to the Court in your earlier

testimony, do you regard Easton National as being a commercial bank?

A Definitely.

Q To what extent, if any, does the presence or absence of heavy industry in the Phillipsburg-Easton area affect your ratio of commercial and industrial loans to total loans?

A It has its effect, of course, on our loans, the amount of industry in the area. However, there are some major industrial plants in the Easton-Phillipsburg area who perhaps keep their major share of their cash outside of the Easton-Phillipsburg area and look to New York City, and Philadelphia, and so forth, for the greater share of their loans, or their borrowings.

Q Do you know, Mr. Jones, what Easton National's lending limit for individual loans was as of year end 1967?

A Our legal lending limit would include our capital stock—a percentage of our capital stock, surplus, undivided profit, and the equity part of our reserve for losses on loans, all of which total approximately $6,900,000. Therefore, legally, we could loan $690,000, or ten percent of that figure.

However, from a practical point of view, we stick to [fol. 476] the old regulation, which is ten percent of capital and surplus. And in our case at December 31st, 1967, that amounted to $5,275,000 or $527,000, as a legal limit.

Q Do you get any commercial and industrial loan requests from Phillipsburg and environs that exceed $125,000 per request?

A Exceeding $125,000?

Q Exceeding $125,000 per request, per loan request.

A We have had loans exceeding that amount in Phillipsburg. We have participated with a Phillipsburg bank over and above their legal limit.

Q Which bank was that, sir?

A We have participated with the Second National. I am quite sure it was the Second National.

Q Do you know of any other loan request you may have received from Phillipsburg and environs exceeding $125,000 over, say, the last two years?

A I can't recall any.

Q Would you please describe for us, Mr. Jones, some of the types of commercial or industrial firms to which Easton National lends money?

A We have loaned money to the textile industry; we have loaned money for industrial development. We have an

industrial area where several concerns have moved into the area from outside. We have participated in the construction of [fol. 477] their new plant, or plants. And we have loaned the companies individually. Manufacturing concerns of varying types–machine tools, as I mentioned, textiles.

Q Would most of these businesses to which you lend money be considered small or medium-sized businesses?

A Well, again the degree. How do you measure small in industry, by sales or–

Q If we said the figure $250,000–or the figure between $250,000 and $500,000 in total assets, could you then indicate to us whether most of the businesses to which you lend money would fall within that range?

A I would say the majority of them, yes; that or smaller.

Q Do you recall, Mr. Jones, any instance over the past five years where, because of your lending limit, you have been unable to fully provide for the credit needs of a customer or a prospective customer?

A No.

Q Do you recall any instance over the past ten years in which the banks within and outside of Easton and environs participated in order to accommodate a loan request?

A I have been with the Easton National only seven years, so I can speak for that, in that area.

Q Will you speak to the seven years?

A Yes, we have participated in loans outside of the Easton area.

[fol. 478] Q Perhaps you didn't understand my question. I am asking you if you recall an instance during the past seven years in which all the banks in Easton and environs, and Phillipsburg and environs, and banks outside this area, participated a particular loan.

A Oh, yes.

Q And what instance was that, sir?

A ITT, International Telephone & Telegraph, built a plant in the Easton area, and the financing was arranged through our bank as the lead bank. And we participated this loan with–I am not sure, but I think there were eleven banks in–the three in Easton, Nazareth, Bangor, Phillipsburg, and there was one–excuse me–there was one bank in Philadelphia that took the overage. It was a larger loan than all of us combined could handle, or wanted to handle.

Q Do you recall the total dollar volume of that particular loan?

A I think it was something in the neighborhood of two million dollars. I am not sure now. This was four or five years ago.

Q Mr. Jones, you have testified that on one occasion you participated a loan with the Second National Bank of Phillipsburg. Do you recall any other instances where you have participated loans, over the past two years?

[fol. 479] A In Phillipsburg are you asking, or with the Second National, or–

Q With any bank.

A With any bank. Yes, we are participating with a bank in Allentown on a loan, we as the lead bank. This organization built an operation in Allentown and we needed support on it. So one of the Allentown banks participated with us.

Q And what approximately was the total dollar value of that loan?

A It was close to a million dollars.

[fol. 480] Q Mr. Jones, do you recall ever having lost a customer or a prospective customer because he didn't want to be bothered with a participation loan?

MR. WATERS: I object, your Honor.

THE COURT: He has no way of knowing what is going on in the mind of a prospective customer. Objection sustained.

Q Do you recall, Mr. Jones, ever having lost a customer because he didn't want to be bothered with a participation loan?

A Not to my knowledge?

MR. MEYNER: I object.

THE COURT: The same ruling. How would you know that?

Q Have you ever been told, Mr. Jones, by a customer that he didn't want to deal–

THE COURT: Objection sustained.

Let me get again, what did you say your lending limit was as framed by your policy?

THE WITNESS: 10 per cent of our capital and surplus.

THE COURT: Which is approximately how much?

THE WITNESS: Capital and surplus are approximately $5,300,000 and 10 per cent of that would be $530,000.

[fol. 481] THE COURT: Have you had many requests for loans within the area of 100 to 500,000?

THE WITNESS: Not many, no, but we have had and we do have loans within that category certainly.

THE COURT: Do you have a large number of them in that category?

THE WITNESS: I would say not a large number. The majority of our loans are smaller than the limit of two to $300,000. The majority in numbers are less than that.

THE COURT: I would assume—correct me if I am wrong—that you are quite well acquainted with the economic development in Easton and environs, Phillipsburg and environs, and related areas, adjoining areas of Warren County, am I correct?

THE WITNESS: Fairly well.

THE COURT: And what is the nature of the industrial development that you have been able to observe throughout the entire area of Hunterdon County?

THE WITNESS: You mean the type of industry?

THE COURT: In terms of size, capitalization and so forth as far as you could observe.

THE WITNESS: Well, Ingersol-Rand is probably the largest single industry and its main plant is [fol. 482] located in Phillipsburg. I believe there are between three and four thousand people employed there. In Phillipsburg, Baker Chemical is another substantial industry in Phillipsburg. Dixie Cup plant of American Can Company is located in Easton. They have two plants, as a matter of fact, and there are a lot of smaller industries, machine tools of one sort or another and textile outfits. The Lite-Form is a substantial outfit. Lehigh Incorporated, they have a forging plant and they have a tool shop. There are several other. I am trying to think of some of the other major concerns. Mack Printing Company. That is a company that prints scientific magazines of one sort or another. Paris Enterprise, Taylor-Wharton, Treadwell, another forging organization and Easton Car & Foundry. I would say the Easton area and Phillipsburg area is an industrial area.

THE COURT: What would you say as to the rate of growth of industry and commercial—I'm speaking now of commercial establishments and industrial establishments.

THE WITNESS: Well, industrially it has grown in the last five years. I mentioned earlier that there are several new concerns. IT&T built a new plant. I think they have approximately 350 people employed [fol. 483] there.

Fairmont-Lavalle, which is a forge concern, they have established a distributing warehouse operation in the Easton area. They make women's clothing. S. I. Handling Systems, Incorporated. They make handling—commercial handling equipment. Lavalette Corporation has recently moved into the Easton area. They make refrigeration equipment, not the actual—not the compressing part of it but the tanks and the boxes, and so forth.

* * * *

Q Mr. Jones, do you know whether there is any legal restriction against your bank soliciting trust business in the State of New Jersey?

A There is no legal restriction, to my knowledge, unless we do not comply with the laws. We have qualified ourselves to the business, trust business in New Jersey.

* * * *

[fol. 484] Q Does Easton National offer fully automated services through the use of computers, Mr. Jones?

A We do not have a fully automated—or we do not have a computer.

Q May I ask why not, Mr. Jones?

A Until this time we had not really felt the real need for it. I think we—our size bank, based upon the number of accounts that we have, the probabilities are that we would not save money by installing a computer. The advantages of a computer, however, are numerous in that we could obtain additional information for ourselves and perhaps offer other services, but we are in the limbo stage, you might say, where we couldn't save a lot of money and so therefore we have not done it. However, we are continually studying it and in due course we probably will have a computer.

THE COURT: With respect to computer systems, Mr. Jones, is this a situation from the standpoint of business policy of looking on the one hand at the cost translated in the terms of any advantage and on the other hand from the advantages in serving the needs of the community, weighing both factors.

THE WITNESS: Yes, I would say certainly we are weighing both factors, but as far as providing [fol. 485] services to the community I don't think that a computer would add to what service we are able to perform right now for our community.

* * * *

[fol. 486] Q Mr. Jones, are you familiar with the operations of the Phillipsburg-Easton Clearing House?

A Fairly well.

Q Will you explain to the Court briefly how it operates?

A From the point of view of clearing checks, Easton-Phillipsburg [fol. 487] Commercial Clearing House Association is of great advantage to all the banks of the area. Phillipsburg is in a different Federal Reserve district than Easton and therefore our checks don't clear through the same routine. They don't have the same routine through which the checks are paid. Therefore, the banks in Phillipsburg and Easton, the checks that are cashed within our bank and deposited, drawn on Phillipsubrg, are cleared daily through a selected bank. I think it is every month—it is three months—I believe one of the banks in Phillipsburg or Easton is selected as the clearing bank for that period. All of the banks deliver all of their checks on Easton and Phillipsburg to that one bank every day and they are then paid based on the plus or minus of the checks deposited or drawn against each bank. If this were not the case, the banks in Easton could have a check of itself deposited by a customer or cashed in Phillipsburg and the route of the that check would be to the correspondent or Federal Reserve Bank in New York, and then through the Federal Reserve Bank in—

THE COURT: May I interrupt you for a moment. Let's see if I am correct in my understanding. This is to correct any disadvantages to customers by way of delay or otherwise in commercial bank matters because of the fact that the Easton banks and the Phillipsburg banks are in different Federal Reserve [fol. 488] districts? Is this completely offset by the clearing house system that you specified, is that a correct statement?

THE WITNESS: Generally, yes.

THE COURT: Is that what you are trying to establish?

MR. AUSTIN: I wanted to acquaint your Honor with the existence of the Phillipsburg-Easton Clearing House and its base of operation so as to show—

THE COURT: The indication is that by this system set up there, the fact that these banks are in different Federal Reserve districts makes no difference insofar as service to customers is concerned.

It seems to be another fact which indicates a closely-knit community even though separated by the Delaware River.

MR. AUSTIN: It indicates that, your Honor.

THE COURT: Are you going to be much longer with this witness?

MR. AUSTIN: Two more questions, your Honor, and that will be it.

Q Does Phillipsburg-Easton Commercial Clearing House serve only the commercial banks in the Phillipsburg-Easton area?

[fol. 489] A Yes.

Q To the best of your knowledge, were banks in communities such as Bethlehem or Allentown invited to become members of the Commercial Clearing House Association at the time it was formed?

A Not to my knowledge. I don't believe they were. I doubt if there would be any real reason for them to become a part of the Easton Phillipsburg Clearing house. They don't have enough checks, or there are not enough checks drawn on Bethlehem and Allentown deposited in our area or we in their area.

* * * *

[fol. 490] CROSS-EXAMINATION

BY MR. MEYNER:

Q Mr. Jones, your present bank is the result of a merger, is it not?

A Yes, it is.

Q And when did the merger occur?

A In 1959.

Q And, roughly, what were the amounts in total assets of both banks which merged?

A Approximately twenty-five million each.

Q At the time it was twenty-five million each, and you had a fifty million dollar bank, and now you have a seventy-four million dollar bank, is that it?

[fol. 491] A That is correct.

Q Do you know what effect if any, it had on other banks in the area?

MR. AUSTIN: I object, your Honor.

THE COURT: Overruled.

A I don't know of any effect that it had, really. The other banks have grown, as have we.

* * * *

Q Isn't it true that the Allentown and Bethlehem banks had a higher rate of interest on savings accounts and certificates of deposit before your rate was raised?

A Yes.

Q And did not this affect your ability to attract the dollar, in deposits?

A We did not grow as fast as some institutions with a higher rate. However, we did not lose deposits, to any extent.

* * * *

[fol. 493] Q If these other banks in Allentown and Bethlehem, and in the upper reaches of Northampton County, were to expand their area of activity, would you in turn do so?

A It's conceivable.

Q It would create a real policy question that you would feel obligated to take up with your directors?

A Of course.

* * * *

[fol. 494] Q Is there active competition for trust business in your area?

A Yes.

Q And where do you find this competition coming from?

A From local and out-of-town banks.

Q You do have some Bethlehem banks trying to get this trust business?

A I don't refer to Bethlehem banks. I said local and out-of-town.

Q Well, name the local ones.

A The Lafayette Trust Company, of course, has a Trust [fol. 495] Department and they are actively soliciting business.

Q How about the Allentown banks?

A To my knowledge, they are not soliciting business in Easton.

Q But they have some trust business, to your knowledge?

A I have no way of knowing that.

Q How about the out-of-town banks you speak of?

A Well, the Girard Trust, out of Philadelphia, has actively solicited business from Easton.

Q The same Girard Trust that has a branch in Riegelsville?

A True.

Q You have encountered those people soliciting business?

A I have been told that they have solicited business in Easton.

Q And maybe some of your directors?

A That's right.

* * * *

[fol. 506] Q Have you heard about the location of Hoffman-LaRoche's laboratory and manufacturing facilities in Hope Township surrounding Belvidere?

A I thought you were referring to that in your previous question.

Q No. I was talking about the Harmony area along the river where a great deal of land has been purchased. Did you know about that?

A I knew some land was purchased there, but in the Belvidere area is Hoffmann-LaRoche.

Q Yes. Has your bank made efforts to get that business?

A Yes.

Q You send people out to try to get some accounts or do some service for them?

A Yes.

Q And whenever you hear of any of these developments in any part of Warren or Northampton County or Lehigh County you send people out, do you not?

A On many occasions we do, yes.

Q Would you tell us what effect if any the merger of these two banks would have upon your bank?

A It would have the effect of increasing competition, I [fol. 507] am sure. It is a thirty-five million bank roughly as compared with a twenty, which will allow them to perhaps loan greater amounts solely without going to their

correspondents for assistance to increase their legal limit, but I don't think it would have a great effect upon us specifically.

Q Would it have any effect upon consumers or users of bank services in the community?

A I don't think it would have any effect upon us.

Q Well, when your two banks were merged was there any–did the people who used the services find that they were at any disadvantage?

A I think that both of our banks, as I assume that both of the Phillipsburg banks do, offer practically, if not all the same services that we offer right now. The only difference is the size of its lending capacity.

Q But with a larger bank it would be possible to develop specialization in the various areas of service, would it not?

A Any more than they presently have?

Q Yes, a larger bank could afford to hire full-time people in the various departments instead of dividing the functions among people.

A I can't deny that. I guess that would be the case

CROSS-EXAMINATION

BY MR. ROACHE:

* * * *

Q After your bank merged and you became a $50 million [fol. 509] bank, do you think you did more for the community, were able to offer more services?

A I'm not too sure that were were able to offer more services, but I wasn't with the bank at the time. I came two years later. The probabilities are that there were expansions in all categories.

Q As a result of the merger?

A Yes, I guess so–not necessarily as a result of the merger, however.

Q Would that not result in benefits to the community?

A I think our banks, both our banks were offering pretty much the same services prior to the merger and after the merger. We had a full trust department in both banks.

Q Did you give better and more services? You did nothing more for the community after you became a larger bank?

A I wouldn't say that we didn't do anything more for the community. I say we probably did more of it or—because we were larger.

Q You had an increased lending limit. Was that beneficial?

A Yes, that is.

Q Would that not be helpful to the Phillipsburg National and the Second National if they are permitted to [fol. 510] merge? Will they not be able to do more for their communities in this respect?

A Certainly.

Q Will they not be able to give better services to the community just as you did by expanding your departments?

A Hopefully.

Q And they will be better able to compete with other banks in the area such as your bank.

A Yes.

* * * *

REDIRECT EXAMINATION

BY MR. AUSTIN:

Q Mr. Jones, I believe you testified that although the Bethlehem and Allentown banks have been paying a higher rate of interest on passbook savings than your bank, that is up until recently, you still didn't lose too much [fol. 511] business to them.

MR. MEYNER: I object, your Honor. He said he didn't know.

THE COURT: I don't recall exactly what his testamony was?

(Question read back.)

THE COURT: I don't have a distinct recollection of his testimony on that particular point, so if your summarization of what he said is incorrect I am sure the witness will recall sufficiently well to correct it.

Q Mr. Jones, do you know what rate of interest the banks in Bethlehem and Allentown have been paying on passbook savings over the past year?

A I know one of the banks, namely the First National Bank of Bethlehem paid 3 per cent on regular savings accounts from October of '59 until June of 1966, at which time they increased it to 4 per cent. I do not think the other banks did.

Q To what extent, if any, did the First National Bank of Bethlehem shift from say 3-1/2 to 4 percent or from 3 to 3-1/2 per cent?

A From 3 to 4.

Q From 3 to 4 per cent—what effect if any did it have on your bank in Easton?

[fol. 512] MR. MEYNER: If he knows.

A I have no way of knowing that. I mentioned earlier that our bank savings department did not grow materially in the last couple of years when the rate did go up in other areas, but we did not lose either.

THE COURT: Your old customers stayed with you, is that right?

THE WITNESS: Right.

THE COURT: But new business wasn't coming in.

THE WITNESS: That is correct.

BY MR. AUSTIN:

Q Mr. Jones, you indicated there are two savings and loan associations headquartered in Easton.

A Yes.

Q Do you know what rate of interest Valley Federal Savings & Loan Association has been paying on its savings shares over the past year?

A They are currently paying 4-1/4 per cent. From January 1966 until January 1967 they were paying 4 per cent.

Q Do you know what rate of interest the Fairview Savings & Loan Association in Easton is paying on its savings shares?

A I believe they are paying 4-1/2 per cent.

Q And how long have they been at 4-1/2 per cent, to the best of your knowledge?

[fol. 513] A Since the middle of this year, approximately.

Q Well at the time that either Fairview or Valley Federal adjusted their rates upward on their savings shares, did you make a vertical movement in your interest on passbook savings to counteract their increases on savings?

A No, we did not. We changed our rate July the 1st of 1968.

Q In response to what, may I ask, Mr. Jones?

A In response to the movement originated by the Lafayette Trust Bank and the Northampton National Bank just a few weeks before.

* * * *

[fol. 519] THE COURT: I make this further observation, you consider it for what it is worth, if you don't think it is deserving of any attention you ultimately have the opportunity to convince me of that, but the testimony has been to the effect that customers of banks use more than one—quite frequently use more than one service. There is testimony that those who borrow from a bank also deposit their money in the [fol. 520] bank.

It has occurred to me that the more of the business that is kept within the community defined as a logical geographic market or an area, the better the needs of the entire market will be served because you will have a continuing growth or continuing development of an individual's funds there to promote personal and commercial and industrial interests. That goes beyond their immediate interests and makes it possible for the bank, I would suggest, to serve the entire community better, and it places the bank in a position where its capacity to compete is substantially increased.

Of course, I have to consider the matter of concentration. Up to this point that has been a troublesome feature. It seems there are large numbers of banks participating in the available business in the Lehigh Valley, in the Easton area, the Phillipsburg area, throughout the Lehigh Valley.

Now how forceful the competition among them is I don't know, but it does seem that when they can reach out and get the business they do. On the other hand, that might suggest to me the need for more aggressive activity on the part of [fol. 521] a bank able to engage in that kind of activity.

* * * *

[fol. 525] MR. WEINBAUM: On this lending matter in the community, I think we do have to recognize that while larger banks are going to be able to lend larger sums of money, we have to consider the type of borrower that is going to be benefitted.

And it is our contention, your Honor, that the type of borrower that is going to be benefitted from this increased lending capacity is, in fact, the very substantial businessman who, in most cases, can turn to the larger banks for his borrowing needs. We are concerned, to a very great extent,

with the small borrower. And this is what constitutes the greater portion of these defendants'–

THE COURT: Well, in terms of dollars today, you wouldn't consider a business with a capitalization of, say, $200,000 to $300,000 a large business, would you?

MR. WEINBAUM: No, I wouldn't.

THE COURT: Thinking in terms of need, satisfying needs of the community, promoting the future of the community, those establishments that provide employment beyond the particular need of the borrower, there [fol. 526] are also numerous indirect benefits coming to the community by making it possible to establish that type of business there. And a business in the class of $200,000 or $300,000 is not likely to be seeking its money from a New York bank.

* * * *

[fol. 527] THE COURT: I don't have evidence at the present time which would provide the basis for final conclusions. I am just throwing out these observations as to what I anticipate I will have to meet. All right. Do you have some more questions?

MR. AUSTIN: I have almost exhausted it, except for one quick point. And that is, assuming that there is a need in the combined Phillipsburg-Easton and environs market for a larger lending limit, I think Mr. Jones' bank, with a top legal limit of $600,000–assuming that it is a convenient alternative for those [fol. 528] businesses in the combined area who, in fact, need loans approaching that limit–it would be satisfied.

But the fact that his present commercial and industrial loans ratio is 10.5 percent would indicate very strongly that there isn't that much of a need, because–

THE COURT: Another question may arise, counsel. Even though a bank has that lending limit, as to a single loan, in pursuit of a sound business policy, what volume of such loans, which go up to the lending limit should a bank approve? And I wouldn't be surprised if that is a question that a bank has to consider carefully.

MR. AUSTIN: I agree, your Honor.

This last thing, and I will quit. Plaintiff's Exhibit 46, which I believe is in evidence, shows the lending limits of commercial banks in Phillipsburg-Easton as of the year end 1966–just a quick tabulation on my part shows that the combined limit comes to around, I guess, two million–1.5,

1.75 million. So if all seven of these banks—and we are including the whole of Nazareth National—

THE COURT: Mr. Jones, it may be uncomfortable up there. While we are going through this, if you want [fol. 529] to step down—

THE WITNESS: I am comfortable.

THE COURT: All right.

MR. AUSTIN: I am finishing right now. I am just saying that if we had a merger involving the seven banks in Phillipsburg-Easton and environs, the resulting lending limit would be around—

THE COURT: Wait a minute, counsel. That illustration fails, because then you have such effect on competition that serving the needs of the community is not the paramount feature. Then you create a monopoly on the bank. We don't have that.

But consider this—if it has any validity—it would seem to me that a bank with a $500,000 lending limit might not be able to afford, in pursuing good, sound banking practice, to make a large number of loans, perhaps in excess of $300,000. It occurs to me that if a bank did, it would be concentrating all of its business in that type of loan and thereby discouraging the smaller borrower, who is also a depositor. A limited amount of those loans might be wise to invest in. But the greater volume, it seems to me, is of the smaller type, well under the lending limit.

* * * *

[fol. 531] RECROSS EXAMINATION

BY MR. SMITH:

Q Mr. Jones, as a matter of fact have you in your experience in your bank observed that the amounts requested by firms or commercial businesses for commercial loans are higher in amount than they were formerly, by reason of their business requirements?

* * * *

A I daresay that we have not had many requests—I [fol. 532] say "many"—that we have not been able to satisfy.

Q But I am asking you whether the amounts that they have requested have not grown and increased over the years that you have been with the bank? In other words, that the businesses have asked for more money than they formerly would have asked for their banking needs.

A Well, I might answer that by saying that as we have grown our legal limit has increased and we have increased our maximum loans in several areas.

Q And those requesting the loans have asked for larger amounts?

A Right.

Q I would also like to ask you this. Is it not a fact that you have in the past seven and eight years expanded the area wherein you are making these commercial loans, beyond the geographical limits that formerly were there in 1961; you have gone further from Easton in making these loans than you did formerly, is that not the fact?

A I don't think so, materially.

Q Well, you have gone into Allentown?

A This is our customer, and it has been our customer. He has expanded and we have been taking care–

Q You have also gone to Washington, New Jersey, and other places in New Jersey. Is that not an extension of where you formerly made other loans, over the policy six [fol. 533] or seven years ago?

A To my knowledge, we have very little business in Washington, New Jersey.

Q But I am asking whether you made any commercial loans; did you formerly make them there or seek them?

A I don't think I can answer the question.

Q But you are expanding it now even to Belvidere, New Jersey, and White Township, and other places, where you can get the business, you are seeking the business outside of the local area of Phillipsburg and the townships that are described in the limits set by the government?

A Perhaps so. I say again that we would go to Allentown, if we could.

Q You would go anywhere, then, in the area?

A Yes.

* * * * *

[fol. 534] FRANKLIN EDWARDS, sworn.

DIRECT EXAMINATION

BY MR. WEINBAUM:

Q Professor, will you please state your address?
A 560 Riverside Drive, New York City.
Q And what is your profession?
A I am an associate professor of banking at the graduate school of business at Columbia.

* * * *

[fol. 537] BY MR. MEYNER:

Q Professor Edwards, have you visited with any of the bankers in this area?
A No, except for today.
Q Well who did you visit with today?
A Mr. Jones.
Q And did you ever visit any of the bankers in [fol. 538] Phillipsburg?
A No, I never spoke to any bankers in Phillipsburg.
Q Did you ever speak to any of the other bankers in Easton?
A No, sir.
Q Did you speak to any bankers in Bethlehem?
A No.
Q Did you speak to any of the bankers in Allentown?
A No.
Q How long a visit did you make in this area?
A Well, the last time I was here I spent the day driving throughout Phillipsburg, Easton, walking in the area and driving out through Warren County and I believe I drove to Bethlehem that day as well.
Q You didn't go to Allentown?
A No, but I am very familiar with the area.
Q Why are you familiar with it?
A I grew up in the area.
Q Where did you grow up?
A Lansford, Pennsylvania approximately 25 miles north of Allentown.

[fol. 549] WILLIAM F. GREENLEY, JR., sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live, Mr. Greenley?

A I live in Scotch Plains, New Jersey.

Q And where are you employed?

A I am employed by the Fidelity Union Trust Company here in Newark.

Q In what position?

A Senior vice-president in charge of the bank's bond portfolio and money position.

Q Will you state your qualifications in business and banking?

A I am a graduate of Princeton where I majored in economics, specializing in money and banking. I graduated cum laude. I took my graduate work at Columbia Business College and also Fordham business school. I went into banking in the late 1930's. While in the armed forces I was in government service for five years, in the 1940's. I worked with the Bankers Trust Company in New York and the New York Trust Company and fourteen years ago came with the Fidelity Union Trust Company here in Newark.

Q Are both of the banks in this merger, the Phillipsburg National and the Second National Bank, correspondent banks of the Fidelity Union?

[fol. 550] A Yes, they are.

Q Were you consulted in 1965 with reference to the conditions at the Second National Bank?

A Yes, I was.

Q Will you describe what happened?

A From time to time we had been consulted on the bank's portfolio as to certain particular individual investments. That particular time I was asked to look at the bank's entire portfolio and also as to the employment of its assets and to any other recommendations or thought that I might have about the bank as a whole.

I believe I was asked in this connection because when I was in banking I had worked on quite a few mergers, both to analyze them in connection with trust departments of the banks where I worked and also from time to time when I was

with the Fidelity, when we were hopeful that we might merge with somebody, but the deals did not jell.

I might also say in connection with this that I spent a few years with General Foods where my particular work was in connection with acquisitions.

Q Now, having been asked in 1965 to make this analysis, did you make the analysis?

A Yes. We made the analysis and I talked with certain officers of the bank regarding it, because it embraced practically an entire revamping of their portfolio. After [fol. 551] talking with them I was asked to appear before their board as a whole and express what my thoughts were on the portfolio and what perhaps they needed to do.

Q What were your recommendations to the board as a whole?

A My recommendations at that time were that they sell certain government securities, that they revamp as to timing some of their government securities, and that with some of the funds that they got from liquidating these securities that they move into tax-free bonds.

Q And did you make any recommendations at that time with respect to management?

A I talked to several of the officers in that connection, and it was my feeling at that time that because of the advanced age of the officers and what I felt was lack of knowledge with respect to certain of the investments and the general banking picture of some of the directors, that they would need at least three new men.

[fol. 552] Q In how long a conference?

A I would say that this was—this whole discussion, I would say, would take at least two hours.

Q And what were your recommendations with respect to management?

A I felt that they needed three men. Certainly the most important to me was that they needed a trust man, who would have a knowledgeability of investments. I also felt that they needed a mortgage man, because in looking at that picture they seemed to have to go outside all the time for opinions as to their real estate risks. And I thought they probably needed a good general man there who could take over.

Q And were you asked by them to do something about this?

A Yes, I was. And I told them that they would have to think about salaries right at the start, because—May I refer to notes that I have?

THE COURT: Certainly.

A (Continuing.) At that time in Fidelity the three types of persons that I thought they would need were one for the mortgages—this would be running somewhere in the $9,000 to $14,000 bracket. The general operations man would be somewheres from 10 probably to 14. And when they got to the trust man, and so forth, this would run 12 to $15,000. [fol. 553] That was back in '65. The comparable salaries that we now have in our salary makeup, or scale, whatever you want to call it, those jobs now—the one that was 14 has now gone to 15; the one that was 15 has gone to 16; and the last job has gone to $18,000.

If I may, Mr. Meyner, I also pointed out at that time that—the difficulty in getting such people; and also that with a bank of this particular size, the burden of putting salaries of this amount into the expenses would have to be pretty carefully followed. And there is also, too, when you bring in people like this, if it isn't done very adroitly, and carefully, you run a real danger of upsetting your whole personnel.

Q Were you requested to do something about procuring these people?

A Yes, I was. I was asked by the president of the bank to look and see if I could find anybody. I looked in our own organization. And I hope you will pardon it, Mr. Smith—there was just not the attraction in the Town of Phillipsburg to young fellows to go there. Also, when you quote salaries such as this—remember, in a bank like Fidelity, and this is even more pronounced if you went to Philadelphia or New York—that there is a benefit program goes with these salaries that probably runs 10 to 15 per cent more than this. So when you are talking of salary—let's [fol. 554] take $15,000, you are probably talking another $1,500 in out-of-pocket expense for insurances, and the various other types of bonus, or things like that. And then when you introduce this—I go back to my other thesis—then you just can't do it for the one guy, you have to do it for everybody.

Q You did make an effort to—

A We made an effort—I reported to Mr. Pursel on several occasions, and I kept up looking, because—I handle a number of banks, and we also have a man that does nothing else but

go around and see banks all the time—but we try to cente particularly when they are looking for investment men, thes requests all come through me. As a matter of fact, any o these come through me. And you find the picture in many banks, where they are looking for people. And we kept up constant lookout, I would say, for over a year. And th problem was, really, the only ones that came to ou attention—at least the way I could sum them up, they wer either duds that weren't getting along somewhere else, an you wouldn't wish them off on somebody, or they ha obvious personality defects that you knew they just wouldn' work out.

Q So your efforts in this regard were unsuccessful?

A They were quite unsuccessful.

[fol. 555] Q What was your next contact with the bank with respect to their conditions?

A Well, they talked—I might say I continued to work on their portfolio at various steps. But then some of the officers asked me what I thought about solving this thing. And the only thing that I could see would be a merger.

Q And did you suggest a merger?

A Yes, I did.

Q And were you requested by both banks to set up a merger proposal?

A Yes. We were asked by the Second National to look into this. And we started out, naturally, on the statistical basis. We worked quite long and lengthy on the papers that were given to us, the various call reports, other published material, and the examination reports.

Q And did you meet with the directors of both corporations on a number of occasions?

A Yes, we met with both both—I say we—I had a young man who was assisting me—met with either the full boards or committees of the boards, I would say, somewhere near a half-dozen times.

Q And was there any premium offered at one bank as contrasted with the other bank?

A I think surprisingly in these things—you usually get into awful hassles as to—because some interested [fol. 556] party wants to make a couple extra bucks, which you can't blame him for—but there was nothing like that in this picture. As a matter of fact, I think just on the statistical basis the actual

nt came down pretty close to what you would have st doing it on a pen and pencil basis. I think the only its were, as I remember them—there were several settlement c in there, and the tax treatment of those did make a done just dc ce in the allocation of assets.
arguments other one was the almost constant argument that you reserves in t ny of these types, that somebody thinks his building is difference in nore than the other guy's. You just—particularly, like
The other building of one of them was a very handsome get in any of, and everything, but the setting of it was such that worth more he deterioration of—particularly the section of for the bui urg certainly took away, I guess you would say, any building, and value that it had. And I think I can speak on this, as with the nber Phillipsburg, I guess 30 years ago, I used to do Phillipsburg —I say summer—my mother was a maid for some intrinsic valu who had a house in Stewartsville, and I used to go up I remember d work with her. So I knew Phillipsburg as a very summer—I s vn and city in those days in contrast to what it is people who
there and w nd what about the location of the two main offices nice town a ank, what area of town are they in?
now.
Q And w 7] A Well, to me, to make it—I would think of of this bank, robably as being down on the corner of Mulberry [fol. 557] nd somewhere else. It is right near Skid Row. And them probab there is a lack of modern buildings around it, lack of Street and sc And the traffic patterns are certainly not good.
certainly ther here has the growth been in the two banks?
parking. And ell, from my observation, it would appear to be
Q Where on the outskirts, where one bank has two branches
A Well, other has one. But there are certainly other territories certainly on e that, in my opinion, with the increased capital, and and the other of a merged bank, they could put other branches, and out there tha funds to do so, which would certainly stimulate the the size of a of that general area.
have the fund 8] Q Having been consulted by the Second growth of tha Bank originally and then by both banks, will you [fol. 558] what you believe to be the advantages of this National Ban
describe wha ell, first of all, it certainly would be easier to attract merger? ent to the merged bank. I think there is also no
A Well, fi but that the bank could stand more capital and the new talent t nk certainly could attract that capital more easily. question but larger bank ce

There are also other costs and other methods. For instance, I would think that a merged bank there could do more in the way of advertising, more in the way of business solicitation, and certainly take a broader category of risks in the loans than possibly either bank would want to do at the present time.

Q What would your suggestions be as to the departmentalization?

A Well, on that, the first thing that hits you in the eye is that there is really no Trust Department as such in the banks. This is an area which is, with the increasing—shall I say affluence of people, their knowledgeability, that they look to all the time for services. You have the growth of pension trusts, things like that. This is certainly something that would stand on its own.

Mortgages. I think I have touched on that, too. There again a separate mortgage man should be there and [fol. 559] make the decisions rather than in effect outsiders. On the other hand, perhaps a trust man could do some of the investment work, but actually as the bank grows and with the various forms of investment now available it requires more than just turning over U. S. Treasury notes and bills. You have to know the other forms of investment that are available to you so that you can make the greatest return possible on these funds that it is your job to invest.

Q How would you compare the prospects of getting this kind of employee as contrasted with one bank alone?

A Well, certainly it is even tougher for much larger banks with a hundred million dollar capital to attract people. The chances, however, for getting a man naturally runs much better with a bank, the larger the size. Just because they can pay salaries, they do have the benefits, and they give the indication of growth that some young man may feel he can grow with them and wants to grow with them.

Q Is there a deficiency in the capital structure?

A Yes. In my opinion, there is. This, I think, can only be corrected by the sale of securities. If both banks should attempt to sell they would only be fighting for the dollar themselves, one against the other, which would not do anybody any good. I would think doing it separately, because of their size, would probably cost them more to get it. I think a bank, a combined bank, could [fol. 560] probably attract the capital easier and at a lower rate.

Q This would be really selling stock in order to increase–

MR. WEINBAUM: We object to the form of the question, your Honor. It is leading.

Q What effect would the merger have on the loan limit?

A It would certainly increase the loan limit. I should think it would generally be good for the area, because in my time in banking when you had a $25,000 loan you thought you had something. You get more and more requests now, not only for loans of $100,000 or more, but you also get them for over a period of time. The term loan is almost taking the place of the old ninety-day or 180-day loan that you used to have and required a cleanup for so many months of the year. This is almost, I would say, entirely forgotten.

We try to struggle once in a while to get them, but not too successfully, so even if they sign a six-month note you generally find yourself tied up for two or three years. A larger bank can stand having its funds tied up for longer periods of time than perhaps a smaller bank can.

Q Is there much competition for loans between $100,000 and $200,000?

MR. WEINBAUM: We object to the form of the [fol. 561] question.

THE COURT: What is the matter with the form of the question?

MR. WEINBAUM: "Much competition."

THE COURT: Overruled.

A I would say there is. I know for our own part the bank here–and I think I can speak of our fellow banks in Newark–we will not walk a mile for a loan but we will go fifty or sixty miles or a hundred miles if we think there is a loan opportunity to the extent of $100,000 or even somewhat smaller than that.

Q Is there any disadvantage in participations?

A Yes. I think there is. There is a disadvantage to this extent, first of all there is a general money market. When funds were tight, such as they were part of this summer and certainly a year before this, I think most banks or any smaller bank had a real problem getting a participation. Now, not only is it the general market money that decides this, but it can be the special pattern of loans and deposits that the correspondent bank or banks may have. At certain times of the year certainly you can get–other things being equal–you

can get a participation from us. At other times we would not care to participate because we have our funds either fully tied up or perhaps more gainfully employed.

There is the other portion to it, too, that many times [fol. 562] where a participation is sought it is the type of business that you want to be right on hand watching. I am thinking now of say a restaurant or an unseasoned business where you just feel you want to be in there all the time. There is also the thing, too, with a participation loan, that generally the bank giving the overage requires to be paid out first, so that if things go fine this is fine, but also if it is a wavery situation the local bank is pretty well stuck in there.

Q Will you describe, as a banker, the various forces seeking the dollar that a consumer has to spend in investments or deposits?

A Yes, certainly. Here in New Jersey I guess the savings banks would rate first, and here in New Jersey this is not only just for the savings dollar, because many of them have the privilege, which is not allowed in some other States, of having checking accounts as well for individuals. They are also most active in the trust departments. The Howard Savings Bank, for instance, here in Newark, has a very respectable and well-run Trust Department which is a very heavy competitor with any of the socalled commercial banks.

Going further, you have again in New Jersey the savings and loans which have been most aggressive. They are even getting more powers all the time. Recently, I [fol. 563] believe, they are now allowed to participate in these so-called Keogh trusts which are the trusts for self-employed people. They have now been able to categorize what we used to call shares as deposits, and I think generally speaking an awful lot of people just give them the name "bank."

Now, we also have a very heavy demand, if you will, or competition, from the insurance companies. Now, this forms not only the individual agent coming to you and trying to sell you something, but they are going to be selling something–to sell investment programs and in a sort of an indirect way where group life insurance, being almost a must with any company now, a part of most employees' salaries go into paying for this insurance, and there is another group that go–this is the investment funds themselves. I don't need to describe that–where people who have a feeling and a need

nowadays in their judgment for equity money, equity investments, that will attempt to keep pace with inflation, go into this. Some take the more direct one. There is an awful lot of it. All you have to do is shop this side of Market Street, look in the front windows there and you will see the people sitting there. If you go into Merrill Lynch, any of those people, you just see people thronging. These are not millionaires. They are average people, and I know in the bank ourselves [fol. 564] we get quite a few orders from people who want to buy this stock or that stock, and we see it going out of our savings department, and they will say, "Well, we have $5,000 in it now. I would like to buy $4,000 worth." They will say this, "And leave a thousand dollars with you." I think those are the major ones.

You also have your credit unions which are quite strong, particularly in this area. I would think that would be about the major forms.

Q How about finance companies themselves?

A Well, in the competition for loans this is another thing. Certainly on your time loans, personal installment loans, the finance companies have been very aggressive. I think there is sometimes a misconception that the only people who go there are the people that get turned down by the banks. For a long time banks thought it was not fashionable to have people with blue shirts come in and ask for this type of loans. I think that has turned around. You have a lot of trouble because the finance companies have a great jump on us.

You have other types of loans–

Q You mentioned finance companies. Are there agencies that do the same functions as a bank in loaning monies?

A I just don't get your point there.

[fol. 565] Q You talked about the various other areas where a person could put his dollar.

A Yes.

Q Now, how about the agencies that are dealing with people who want to borrow the dollar?

A Well, the personal loan, as I mentioned there, then you have the other side of the coin, too, with people that I don't think you even think of as finance organizations. That is where you can go to any dealer practically for home appliances, certainly automobiles. You can put an "L" on your house, or something, and they will finance it right there

through some finance company of their own or through other arrangements that they have made with finance companies.

Q You are referring to outfits like General Motors Acceptance Corporation?

A GMAC, CIT, any of those.

Q How about the area for loaning on mortgages?

A Well, mortgages, of course you have your savings banks. You have your savings and loans, and certainly your insurance companies. I would say these are our three greatest competitors in the mortgage field.

Q Has banking by mail been on the increase?

A As far as we are concerned it has been. I think again this reflects the general movement of people out of your [fol. 566] urban centers, out to the suburbs, particularly in our case we have noticed it happening down along the Shore. People who used to live in Newark or Essex County have gone down that way. We have also, I think, generally speaking, people don't like to leave an old friend. At least, we try to philosophize that way, and many people who have moved outside of what we would–outside the State entirely, Florida, retirees, California, out that way, still keep up their relationship with us by mail.

Q Would you be able to arrive at a conclusion as to what effect this merger has on the community?

A Well, it is my judgment that it would be beneficial.

Q Why?

A Well, I think one thing would be more services. I believe if the general program were followed–I am thinking now in terms of the trust business. I am thinking, too, that with additional help and the combined thinking of two banks, that various ways of extending credit, not only due to the increased loan limit but to the knowledgeability of the people would allow risks that one bank might not consider should be served. Again with a stronger capital position both the depositor would be protected, and there would be more money available for the general development of the area, particularly as to the availability of moving out into a number of communities in that general [fol. 567] area. I can't name them out of my head, but I know there are probably five or six out there that at the present time have no banking facilities of their own.

MR. MEYNER: Your witness.

BY MR. ROACHE:

Q Mr. Greenley, will you explain to us what we mean by a line of credit?

A Well, a line of credit is an agreement by the bank to lend to a customer a certain amount of money, ususally for a year's time. In other words, the commitment is good any time during that year. They will lend X dollars.

Q They will lend to a business enterprise so much money at any time they wish during that year?

A That is right.

Q Generally speaking, is it not true that lines of credit are not always used?

A That is right, quite true.

Q But isn't it true that it is of advantage to a manufacturer to have a line of credit in case he has an opportunity to purchase machinery at a good price in a hurry?

MR. WEINBAUM: We object to the form of the question, your Honor, as leading.

MR. ROACHE: This is cross-examination.

THE COURT: Overruled. I don't think that this witness can be led.

[fol. 568] MR. WEINBAUM: This is direct examination.

MR. MEYNER: He is an intervenor.

THE COURT: I assume you are taking him on direct, but it is not going to make any difference. As I observed before, I don't think that this witness can be led. I have been observing him very carefully and I think he is quite objective in his statements.

Go ahead.

[fol. 569] A Well, I think a line of credit is the—many manufacturers, commercial houses want that. It is not only helpful in an emergency, such as you suggest, but it is very helpful to them in getting their trade credit. For instance, if they want for some reason—let's say they are buying from some manufacturers. Their regular orders may be ten or fifteen thousand and they want, for some reason, to get twenty-five thousand, they will get it on the same terms. And when the extender of the trade credit calls you, and you go through the usual thing—well and favorably known, so much; and the deposits in the middle five figures, or middle three

figures, or something; but if you also say, "We hold a line of credit available to them for X dollars," this many times is the thing that really sets it up.

Q And if a customer needs a certain amount of money in a hurry, and he has a line of credit, he does not have to worry about participation in order to get his money.

A No.

Q Participation at such times would be a hindrance to this man.

A That is correct. Now, there is the thing, too, that generally speaking when you have a line of credit, you have taken that into consideration, and what you feel the [fol. 570] employment of your assets is going to be—I am talking of the bank now—that you will not require an overage. You overage usually comes from some very unusual thing happening, and quite frequently to somebody that you don't have a line of credit to.

Q And speaking of a lending limit, is it not true that although a bank may have a lending limit—let's use the figure of $200,000—the bank does not always give this lending limit to everyone.

A No.

Q He only has so much money to lend.

A Yes. The lending limit is, I think, a term that is more misunderstood than it is understood, even by bankers themselves. Take a bank of our size—this is not advertisement, but I don't think we have more than fifty customers to whom we extend our legal limit.

Q So take the situation of the Phillipsburg National and Second National, who presently are in the neighborhood of a hundred thousand dollars in a lending limit, they may not extend this lending limit to everyone, because of the funds. An increased lending limit would bring up the amount of money they could extend and still not reach their lending limit.

THE COURT: This is argumentative, counsel.

Q Mr. Greenley, you think it would take several [fol. 571] years for the combined bank to build up a trust department?

A Yes. Ours has been in existence fifty years and we are still building it. It is an area that you have to have a firm foundation in. And it is also an area that you have to have keen minds working in it, because it is constantly changing. I

would say that to get a really effective one going–I can't see it taking less than three years, and I would say five years or more would be more nearly like it.

Q So while they are building up this trust department they are in a losing position with respect to trust business.

A Those trusts are probably going to people that do have them and are soliciting actively in the area. And it is a source of growth to the bank that probably is not being–they are not availing themselves of it.

MR. ROACHE: That is all.

CROSS-EXAMINATION

BY MR. WEINBAUM:

Q Mr. Greenley, how large is your bank?

A Our bank is roughly $700 million.

Q Can you please tell us what kind of correspondent services you perform for the two defendants?

A For the two banks our primary service has been in giving investment advice.

Q Do either of these banks maintain deposits with [fol. 572] you?

A Yes, correspondent relationship usually entails that. It is not unusual for–that is the reason they are a correspondent.

Q Can you approximate the size of the account that these banks have–

A Yes, they are both less than a hundred thousand dollars. I might say these are not large. Larger correspondents run three to five million dollars.

Q Do you have any other correspondent bank relationships in Warren County?

A Yes, but I can't name them offhand. But I could obtain that for you. I would say we have probably three or four.

Q And are you a correspondent for any of the banks in Easton?

A No, we are not.

Q Who first approached you from Second National with respect to coming in and consulting on this loan portfolio?

A We didn't consult on the loan portfolio. It was their investment portfolio.

Q On their investment portfolio.

A Well, that relationship goes back so many years, I wasn't around when it started. But I would presume it would [fol. 573] have been the then president, because I think our relationship goes back over twenty years. And I have only been with our bank fourteen.

Q And did the president, if it was the president, consult you directly about this?

A The attorney for the bank came to me first and told me that the president wanted to speak to me, and it was on the subject of investments. And I believe I called Mr. Pursel and made an appointment for him to come into town.

Q Your ultimate recommendation was that the Second National sell certain of its securities?

A Yes, and replace it by others. It was a turnover of the securities.

Q And do you know whether or not any of these securities were sold at a loss?

A I would presume that some of them were. This is not unusual at all in banking, because of the tax treatment you get on the sale of securities.

Q What other bank mergers have you been a consultant on?

A There is the First Trenton, used to be the Mechanics; there was the Irvington National; I worked on three of our own. We have also—Let's see, I am trying to think now, the names of the banks change so much lately—there were several also in New York that I worked on, more recently one [fol. 574] with the Lafayette National over there.

Q Have any of these mergers involved banks as small as these two?

A Yes.

Q Which ones were those?

A Well, now, some of these did not come to fruition, because the people couldn't agree. But this would be—there was a bank in Washington, New Jersey, that was involved in one who came to us for advice. And I think the one in Irvington, when we looked at it, was about $20 million.

Q And your bank has been party to recent mergers?

A No, we have not had a merger of our own in over ten years.

Q Is it a fair statement to say that bigger banks quite naturally can afford to pay higher salaries to personnel?

A Yes, I think so. I think that is true of any business. Big law firms can pay more to its associates. DuPont can pay more than Dooner & Smith down here on Mulberry Street.

Q Are you familiar with the type of trust services which have been available at Second National Bank?

A From what I have been able to see, there were not too many. And I am talking now in the terms of modern trust services.

[fol. 575] Q Can you describe these services which the banks have been offering?

A Now are you talking modern services or—

Q What the two banks have been offering.

A Well, it is my understanding that they would act as executor, they would also have inter vivos trusts, and would probably do, if asked, some custodian work. Now, the thing I think you have to remember in this is that when you are affluent enough to have a trust, or want one of these, you are generally talking around the $50,000 limit, and you are pretty knowledgeable or fairly knowledgeable in securities. So you have probably been receiving the nest egg ads from Chase Manhattan, which goes to practically everybody in New Jersey, you have probably been receiving some of our material that we send out. And this goes for other banks. You are going to consult with your lawyer, too. And your lawyer generally is going to say, "Well, we have to look at this as to what they can do in the administration of the trust. We have to look at their investment department." You just can't, you know, run one of these on a shoestring.

Q You regard a $50,000 trust, or over, as a large one, and anything under that essentially a small one.

A That is the way we happen to classify them in our bank. I don't know that that is a standard classification, [fol. 576] however.

Q Are you aware of the fact that there are many banks in the fifteen to $25 million category that do not have trust departments?

A Well, this is probably one of the reasons they stay that small.

Q Did you indicate, Mr. Greenley, that a trust man would also serve to direct portfolio policy of the bank?

A He could help in it, because generally speaking he will be acquainted with money markets, with the general security

markets, he will know how to execute orders. And many times in your trusts you have to keep, I would say most of them—we happen to have a policy of 50 per cent equity, 50 per cent bonds—but in many of them, the particular person tells you you can only have 70 per cent—you have to have 70 per cent in stocks, or 70 per cent may be in Government bonds. So generally speaking, I think, a man that was familiar enough to warrant the trust of his directors to pick the investments for these various types of funds would have the general knowledgeability to at least assist in the portfolio. A bank even with a hundred million, you see, doesn't have too broad a range to go in.

Q Are you aware of any demand in Phillipsburg for trust services not presently offered by either of these two banks?

[fol. 577] A Well, I am not a resident of Phillipsburg, and don't spend much time up there, but I would say this, that with the general move of people out into that area—I am talking of adjoining counties, and so forth—your trust business generally comes from a very wide area around your bank—and the general affluence, increasing affluence, the knowledgeability of people, I would certainly—trust customers just don't walk in your front door. You have to go out there and get them. And your trust department isn't going to grow unless you have the people to do that.

Q Mr. Greenley, you indicated that, in your opinion, the Second National needed a mortgage specialist. You are aware of the fact, are you not, that Second National had a high percentage of its loans in mortgage loans?

A Yes.

Q You are?

A Yes. I think what you—May I just add a comment there? The mere fact that you have a lot of mortgages doesn't mean you don't need a mortgage specialist. What you are talking about is originators; I am not, I am talking about administration of them.

Q Was there any indication, based on your examination of the bank, as you looked it over, that the mortgage loan portfolio had serious defects in it?

A Well, only as to the way I would look at it—I didn't [fol. 578] examine each one carefully. I looked at it as to the employment of assets.

Q And what did you conclude with respect to the employment of the mortgage assets?

A Well, it just seemed to me, in looking at them, that it was entirely too much of the funds invested in there. And there were many other media available where a higher return of interest could be received.

Q Other than mortgages?

A Other than mortgages, right.

Q So that it would be your idea to cut down on the mortgage activity in the Second National Bank?

A No, I would think it would be better to have it grow larger, and have more capital, so that this amount of mortgages wouldn't seem as much out of proportion as it might under the present figures.

Q On what basis did you conclude that Second National needed a general operations man?

A Well, at the time I looked at it it just seemed—I am talking general operations, I don't mean the fellow that is going back there and tell each teller what he is supposed to be doing. I think a man that is looking ahead, adopting new techniques on the thing. And the man that seemed to be doing it at the time I was there, he was thorough; I think he had been doing his job for many, many years; but he [fol. 579] was still doing it the way he learned it.

Q When you speak of a general operations man, would this man be the man who would likely be the president of the bank?

A I don't think so, necessarily. I think, from my observations around, the president of the bank is sort of a "Johnny-Do-Everything," or has to know how it's to be done. But I think when you come down—and I don't think you can say that either the head lending man, head investment man, the head trust man, or the head operations man is the heir-apparent. The difference there usually comes in personality and the ability to get business.

Q You indicated that Mr. Pursel, the president, asked you to endeavor to find some additional men.

A Yes, he did.

Q Can you tell us a little bit more about how you went about this?

A Well, naturally, we went over my own talent list we have at the bank. This consists of two things, because when you look over this list you wonder if maybe you have to raise a couple of them a little bit more so that any approach they get from the outside won't be too tempting. I mean we are not unselfish in the way we run our business. You have to think of youself, too, you know.

Q You wouldn't hesitate to offer up somebody from [fol. 580] your bank?

A I certainly would. If I didn't think the man would fit the job, I wouldn't. I have duds there I could have sent up there, but I wouldn't do it.

Q But you wouldn't be reluctant to propose any of your best men for a position in another bank?

A I would certainly do that. But, you see, the thing is that—

Q You would hesitate?

A No, I would not hesitate, because I would know the offer they could make, the other bank just couldn't come up to it. The salary ranges in these small banks are quite shocking.

Q Well, assuming a bank were able to pay—another bank were able to pay what was felt to be a competitive salary, would you be inclined to offer up your best people to one of these banks;

A Let me tell you this. When you have got a good guy and somebody is after him, you don't have much choice. Because he doesn't go around waiting for you to tell him you are the boss. He goes to some head shrinker around here, or something, who just looks for these people. You have agencies all over that are looking for bankers. All you have to do is look in the American Banker, you get two columns a day of jobs open. Look in the New York Times. [fol. 581] There are agencies in New York that only specialize in this. And still they can't get people.

Q So you looked around your own organization.

A Yes. And we had a file, I'd say—not a big one—I don't mean to say that we run any employment agency, because that is not in our corporate structure, but we do have a list of names that we keep of people who either indicate to us that they are unhappy where they are or for some reason have left a particular bank. Now, again, I go back to this. When a bank

has gotten rotten rid of them, it is usually because they haven't been up to snuff) snuff on some structure—some side of it, or the other; or, on the o1 the other side of it, it is a personality thing.

I think think you also have to remember, in the case of Phillipsburg-psburg—and I don't like to harp on this—that it might be somewhat e what easier to get somebody to come to a bank, let's say, in Shor n Short Hills, New Jersey, than it is out to Phillipsburg.

Q Well, Well, can you think of any good reason why somebody might want want to leave a city like Newark, or any large city, and go to a place a place like Phillipsburg?

A Well, Well, that would be speculation.

Q Let's Let's speculate a little bit, Mr. Greenley. Why might a large city ba city banker want to go to a place like Phillipsburg?

[fol. 582] 582] A He might want to take life easier. That's about the on the only thing I could think of.

Q Mr. (Mr. Greenley, did you put the people at Second National Ban nal Bank in touch with any individuals, specifically?

A No, I No, I did not, because none of the people to whom I spoke were i were interested.

Q Did y Did you ask any of these people to whom you spoke to take a rid e a ride out to Phillipsburg, and look around, and take a look at the k at the bank?

A Yes. (Yes. One of the young men came out there with me, and, as a ma as a matter of fact, when I met with the directors several times. I wan I wanted him to get a good look at it, because he had indicated to tited to me some time prior that he might be interested in going wit ng with a smaller bank where the chance, perhaps, for becoming thi the chief executive officer might be greater than it was in a large a large bank.

Q And w And who was this gentleman that accompanied you?

A This w This was a Mr. Wilson. He is an assistant vice president.

Q And w And was he taken out there with any specific position in mind with d with the Second National Bank?

A To my To my knowledge, no. I told him that the way it had been present presented to me, they were looking for a young man that might might become heir, if you will. And he showed no interest [fol. st [fol. 583] whatsoever.

Q Did yo Did you talk to him in terms of salary?

A That's That's right.

Q What t What type of a salary did you quote to this man?

A I coul I couldn't quote any salary to him. I could only give him general r eneral range.

Q What was the range you gave him?

A I thought it would be about twenty thousand, after he had been there a while.

Q What did you tell him about his starting salary?

A I didn't tell him anything there. I told him that would have to be a matter of negotiation. I was not empowered to hire anybody or discuss salaries with him. I think you have to get that straight.

Q But you did not refer anybody back to the directors of the Second National?

A I found no one that in my judgment would fill this or showed any interest.

Q Do you know anything about the fringe benefits that are paid at the Second National Bank or the Phillipsburg National Bank?

A No, but I know—I can't say that I know them to the dollar or penny. But the fringe benefits, for instance, that the New York banks pay—I guess that would be the same [fol. 584] in Philadelphia, or our three large banks here in Newark, are substantially better.

Q Do you know of many small banks that can offer fringe benefits equivalent—that is, the usual fringe benefits equivalent to the big city bank?

A No, I don't.

Q You indicated, Mr. Greenley, that there was a lack of parking around the banks of—the defendant banks in Downtown Phillipsburg, I believe. Are you aware of the fact that Phillipsburg National has a parking lot immediately adjacent to its main office in Phillipsburg?

A Yes. The last time I was there I had to wait down the street quite a while before I could get a spot in it.

Q Can you describe for us a little more fully what you mean by the deficiencies in capital which exist in these two banks?

A Well, I think it's—I don't know that the bank supervisory people have pointed this out, but the ratios there, I think—I don't have a statement in front of me, but it seems to be quite low. I don't know whether—

Q What ratios do you speak of?

A This would be loans, deposits.

Q Is that the principal deficiency you refer to?

A Yes, I would say. I think it has been pointed out to both these banks that they will have to increase their [fol. 585] capital.

MR. MEYNER: Do you want to give him this? It is the last bank statement of Phillipsburg National.

MR. WEINBAUM: I have one more question on this point.

Q What, Mr. Greenley, would you believe to be a proper loans-to-deposits ratio for a bank in an area like Phillipsburg?

A I can't answer a question like that. Each bank has its own proper ratio based on the type of customer it has, when their borrowing occurs, and also what they expect to be doing with their money in the near future. You like to have a good solid ratio, let's say percentages of both– you have to have it related to two things, mind you. It has to be related–your capital has to be related to your deposits, in order to protect them, and it also has to be related to loans, because you don't want to go out too far

Q Well, we were speaking a minute ago about a loans-to-deposits ratio, and you indicated that the bank had a capital deficiency based on that ratio.

A I wish you wouldn't use that word, because I think generally speaking capital deficiency means that you are out of capital.

Q I am describing your words, Mr. Greenley. You indicated that this bank had a capital deficiency.

[fol. 586] A All right. I will change that then, because I am using it in sort of the common sense of the word, where you need more.

Q Well, use it in the banking sense.

A In the banking sense of the word. All right. This bank could stand more capital.

Q And you don't wish to comment on what you consider to be a proper loans-to-deposits ratio?

A No, I would have to make a further study to see just what their loan forecasts were, and so forth.

Q You have not reviewed the loan portfolio–

A I never reviewed the loan portfolio. I would like to go back to that, I worked on the investment portfolio.

Q Thank you. Are you generally familiar with the Phillipsburg-Easton area?

A No, I would say not. I am no market study man.

Q Mr. Greenley, as a Newark banker, do you know of any instances where new business or industry has stayed away from Phillipsburg because the banks there could not provide adequate capital?

A I couldn't answer that question. I do not.

Q Is it correct that the first time you were requested by Second National to look around for some management for the bank was in 1965?

A Yes. To try to pinpoint it, I think it would probably [fol. 587] be early December 1965. I don't know what other requests they may have made to other banks, or other parties.

Q And when these banks asked you to look around–

A There was only the one bank asked me.

Q When Second National–

A Yes.

Q –asked you to look around for it, for a trust officer, for instance, did you apprise them of the fact that it might take some years before this man would be paying for himself?

A Oh, yes. I think this, in banking, is the generally-accepted fact. I think I also mentioned at that time, too, that there were–I don't remember what, but I also mentioned to them that there were specific agencies in New York where you could get these, and that these advertise. But again the salary levels that you see in these things are just astronomical now.

[fol. 588] Q Would the loans that you participate in with correspondents generally be large loans?

A No. They would generally run, I would say–on our books they are as low as $25,000. I would say that generally speaking we don't like to go more than $200,000, if we can possibly help it.

Q On a participation?

A On a participation.

Q $50,000 would be the share of your bank?

A That is right.

Q When you do participate in a load do you use any extra caution in the granting of credit than you would if you were handling the entire loan yourself?

A I would say that we use the same standards. The one thing that we have to take into consideration–I may have mentioned this before–is the type of loan that comes–the one that usually requires almost on-site follow-up. I

mentioned specifically restaurants, things like that, or a brand-new business where you do want to see that they are doing the business that they said they did and what the people in town think of the business.

Q Would your bank do an on-site review?

A What we would probably do is we would depend a lot on the capability of the loaning officer in the bank. If we knew him to be a very careful banker in the sense [fol. 589] that he would follow up on the usual things—for instance, if it was the situation of an electronic company and we knew that this fellow had never dealt with an electronic company before, we might be a lot more stringent in looking at it than if it was a dyeing mill or something like that where we knew due to the locality and so forth the people had experience.

Q Just a few further questions, Mr. Greenley. You indicated that should the merger be permitted these banks would be in a position to open additional branch offices perhaps more readily than they now can.

A Yes. I would think this would be true. I would think the potential would be there. When you open a branch you know you have to think about how much you are going to pay for both your land or your building and your equipment in it, or if you are going to rent it, what this is going to do to your earnings. Personnel is a big thing, too, because you can't just pin it down just for the sake of having another shop somewhere. You want it manned by qualified people, and this again harks back to the fact that you do need, not only at top level but in between, you need men that can run a place like that.

Q And do you believe that branches are important with respect to a bank being able to go out and better serve outlying areas?

[fol. 590] A Oh, yes. I don't think there is any question about that.

REDIRECT EXAMINATION

BY MR. MEYNER:

Q About the needs of additional capital, I show you D-18 and D-19 marked for identification, the 1967 annual reports of both banks, and ask you what you mean by "the need for capital."

A Let's look at the 1967 report of Phillipsburg National which says there roughly $1,200,000 capital accounts against $24,000,000 of total deposits–I guess it's that–I am having trouble with my glasses–against total deposits there of $22,000,000. Now, if you divide the one million into twenty-two million you don't have too much coverage, in my opinion.

Q Slightly more than five percent?

A That is right. It used to be the rule–and again this is bank management–what you did–the old ratio used to be ten to one. This was supposed to be safe, ten to one, and you didn't like to get it much below eight to one.

Q This is about twenty to one?

A This is one of the things I would say there, and on there we have the Second National which has somewhat a better position. They show a total capital of about a million, and their deposits are about sixteen million.

Q So that is about one to eight?

[fol. 591] A One to eight.

MR. MEYNER: That is all

FRANKLIN EDWARDS, resumed, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (Continued)

BY MR. WEINBAUM:

* * * *

[fol. 592] Q Are you familiar with the services and functions performed by financial institutions other than commercial banks?

A Yes, I think I am, generally, anyway.

Q Professor Edwards, what in your opinion are the primary functions of commercial banks?

A Well, they accept deposits of all types, which could be demand deposits, savings deposits, time deposits, certificates, et cetera. They extend credit of different types ranging from business loans to mortgage loans, consumer loans, and so forth. They provide some safekeeping functions, safe deposit boxes, and in addition as a general statement I would say they are probably the most important institutions involved in the implementation of monetary policy as pursued by the Federal Reserve.

[fol. 593] Q Could you explain that in a little more detail?

A Well, yes. The banking system is directly controlled by the Federal Reserve to the extent that the reserve they must keep, and since it is a fractional banking system the banks have a unique ability to expand credit in the multiple sense, the multiple expansion and contraction of money and credit, and it is this characteristic of multiple expansion and contraction that makes them the primary institution in implementation of monetary policy.

Q Are any of these functions that you have just described in your opinion unique to commercial banking institutions?

A Well, we will take them one at a time. The deposit service. The demand deposit service, I think, is. The type of demand deposit that they offer I think is unique to commercial banks. There are some substitutes. For example, in New Jersey I believe mutual savings banks can offer some form of demand deposit, but generally, as a general statement, there is no real competition in my mind for the demand deposit service offered by commercial banks, so I would consider it a unique function of commercial banks.

As far as multiple expansion of money and credits and contraction, as I said, I think that that is unique to national banks, as well.

[fol. 594] On the extension of credit side of their function I think, although I wouldn't go so far as to say that they are absolutely unique in any of those fields, I think they come close to being—to approaching a unique service in their loans to very small or just small businessmen, say a businessman of under $200,000 or $250,000 of assets.

Q What type of business loans do banks make to this type of borrower?

A Well, they probably make both short and long-term loans. The short-term loans would be more in the area of working capital, loans for inventory purposes, we'll say, and the long-term loans might be in modernization of plant, expansion, term loans, these types of things.

Q Can you comment more fully, Professor Edwards, on the checking account function?

A Well, there are other possibly ways people are paid for things, but I don't think any of them are really as cheap and convenient and as safe as the use of a demand deposit service

or checking account. For example you could go to a bank and get a series of cashier's checks made out for specific amounts and you could pay some of your bills with those, but I think that type of thing would be more expensive and certainly less convenient. There are other ways you could pay your bills, too, but rather than go into them I think I can safely say none are as good as demand [fol.595] deposits.

Possibly as an indication that this is true, look at Phillipsburg area yourself, the three banks in Phillipsburg have approximately, by my calculation, about ninety–about eighty-five hundred demand deposit accounts which I would attribute to Phillipsburg, and where I am getting this figure, I am saying if you total up their demand deposit accounts it comes to about 9,800, and since they derive about eighty-five percent of their accounts from Phillipsburg and environs you would roughly say then that there are about 8,500 demand deposit accounts in these banks. If you look at the population in Phillipsburg and environs it is about 28,000 or 29,000, and what that indicates I think quite clearly is that almost every family in Phillipsburg has a demand deposit account. When I say Phillipsburg I mean Phillipsburg and environs. Since there are approximately three or three and a half people per family you can easily figure it out so it is a fairly safe estimate that every family feels the need for a demand deposit account in Phillipsburg and environs, and I think that this is just typical of what you find all throughout the country.

Q Can you comment in more detail on the types of business credit which commercial banks provide for small business?

A Well, as I have said, it is mainly in areas of short-term [fol. 596] working capital loans and in the long-term area of plant expansion, modernization loans to the small businessman. What I would say I guess is that–I did say earlier that I didn't–this may not have been an absolutely unique type of service, and then I said again I thought they provided a unique service, so let me perhaps explain what I mean by that. A small businessman of the type that I am talking about doesn't have access to capital markets and equity markets, in other words, most of the time. There is always going to be an exception of a small businesman who knows a life insurance company executive well and maybe can make a direct placement, but I think generally the small businessman can't tap that credit market.

In addition to that for the most part most financial institutions are legally prohibited from making the type of business loan we are talking about here. Savings and loan associations can't make them, for example. Mutual savings bank generally, depending upon the State, et cetera, don't make that type of loan. If they make it even in the States where it is permitted, it is a very small amount and a very specialized situation.

Perhaps there is one institution that needs further explanation. That is the business finance company. Generally sales consumer business finance companies, as they are often classified, but they do extend some credit to businessmen, [fol. 597] and they are in the area of businessmen like appliance dealers and perhaps automobile wholesalers, and maybe they do some factoring in accounts receivable, that type of thing, but I really don't think they represent any kind of serious inroad on the commercial banking market in the sense of what commercial banks do for these businesses. It is a very small portion of the total market and I don't think it really is the same service as commercial banks provide, so I would say in sum that commercial banks although not being entirely unique come very close to providing unique service to the small businessmen.

Q Do insurance companies make business loans, Professor Edwards?

A They extend—I would rather put it in this sense, they extend business credit quite clearly, but the majority of insurance companies deal with the larger businessman, not the small businessman

Q Professor Edwards, in your opinion are there any services of commercial banks which though not unique the bank may offer with any sort of a competitive advantage?

A Well, that is always a difficult question to answer. I have looked at that question carefully on several occasions, and about all you can do is draw upon the available data and statistics you have available and try to find out one way or [fol. 598] another whether they have a competitive advantage. One of the ones I looked into—and admittedly I looked around for cases where it might be true—that when commercial banks want to start competing with a non-bank financial institution they could do so and have done so very successfully. One, I found, is in the automobile credit market.

Now, why do I say that is? What I did was I said now how much of this business have commercial banks really been able to get when they started going after it, say in the late 1920's, and what I found was that commercial banks from 1939 to 1964 increased their share of this type of financing from sixteen to nearly thirty-four percent of the market, while the finance companies' share in this—specifically sales finance companies—fell considerably from fifty-nine to thirty-six percent.

Now, it is hard to say exactly why the commercial banks can walk into an area where they have previously not been very active and take a large part of that market at will, but this is what they seem to be doing, so I would infer from this kind of figure that they are indeed—they do have some competitive advantage.

Another way of looking at that is to look at what has been happening recently in finance companies' portfolios, and there we will find that finance companies—the number of finance companies is diminishing rapidly both through [fol. 599] failure and merger. I think this indicates again that they are not being too successful in competing with commercial banks who try to go after the business, and they have made substantial attempts to diversify their portfolios away from those areas where commercial banks have chosen to compete.

I think we can leave it as to just why commercial banks have this advantage. A possible one that is commonly suggested—and I really can't judge the significance—is that finance companies often have to go to commercial banks to borrow money and they may have to pay more for their money, and therefore may have to charge a higher rate, but I say that is one that is not commonly suggested and it may depend upon the overall efficiency of both institutions as to how important that is.

Q Professor Edwards, how do passbook interest rates of savings and loan associations compare to those of commercial banks generally?

A Well, I think that is another area with which I am very familiar, and another area which may indicate a competitive advantage on the part of commercial banks, even though at first glance you might think that the figures indicate just the opposite, but that is not true. For example, if you look

at–well, start with all of the time and savings deposits of commercial banks and [fol. 600] compare them with the savings deposits in savings and loan associations. If you look at the average interest rate, the effective interest rate over a time on these two types of deposits, which I will explain in a moment, it reads something like this. In 1950 there was–or 1940 there was a 1.4 percentage spread in favor of savings and loan associations.

Q Are these average figures across the county?

A Yes. There are national aggregate figures. I can cite some more specifically. I will. In 1950 it was 1.6 percent spread–I have read that incorrectly. We will go back to the first date I have in 1930.

There was a 1.4 percentage spread in favor of savings and loan associations. In 1940 it was two percentage points. In 1950 it was 1.6 percentage spread, and in 1960 it was 1.3 percentage spread, and it is diminishing now, but it is still in favor of savings and loan associations, and I will explain why it is diminishing.

Now, what we had here was I think a case where the regulatory authority through Regulation Q was imposing an interest rate ceiling on commercial banks, and savings and loan associations were paying an interest rate substantially above what the commercial banks either were prohibited from paying above the ceiling or what they chose to pay, either way.

[fol. 601] Now, first I think the very fact that regulatory authority have imposed a ceiling on commercial banks throughout history indicates that the regulatory authorities themselves think that consumers or savers would rather put their dollars in commercial banks than savings and loan associations, everything else being equal. Otherwise, why would they have regulated commercial banks and not savings and loan associations throughout this time?

Secondly, if that were not true, then why would savings and loan associations have chosen to pay a percent or two percent higher interest rates on savings deposits if they could attract depositors just as easily by paying an equal rate or just slightly above the rate? But, no, they have decided and chosen to pay a very high rate, a very significant rate, sometimes as much as fifty percent or one hundred percent

increase in the rate over what the commercial bank rate pays if indeed they fare well. Historically the savings and loan associations have grown very fast, although commercial banks have grown very rapidly in savings deposits in these areas, too.

I think both those points are important in knowing why I believe commercial banks have a competitive advantage over savings banks. To be more specific about it, if you look at Phillipsburg or Easton area or the Phillipsburg area alone you will find that the savings and loan associations [fol. 602] pay a higher rate of interest than commercial banks, and indeed until very recently there was substantially more than a percentage point, four and a quarter. The building and loans were paying in Phillipsburg more than a percent above the commercial banks, and in Easton commercial banks were paying three percent on their passbook savings until just recently, and savings and loan associations were paying four and a quarter percent during that same time period, so locally you will find the same type of picture that I presented nationally.

Now, if I can bring a long story to a short conclusion here, recently this interest rate differential has been narrowed. Why it has been narrowing is that for the first time in a long time commercial banks have been given pretty much the green light to compete effectively with savings and loan associations, and this is what I mean. There have been important changes in Regulation Q since 1964 and 1965, and these changes in Regulation Q allowed banks to pay up to five percent. I have the changes here. For example, on December 6th, 1965, commercial banks were permitted to go to five and a half percent on several different kinds of time deposits and five per cent on others. That is very high historically, and indeed it began to press savings and loan associations, because savings and loan associations couldn't just simply raise the rate another percentage point [fol. 603] to keep the spread as they had, because they had other problems. Thus the spread began to narrow on these rates. Now, with the narrowing spread I think it is very telling to look at what has happened with household savings and loans, say since 1965. Previous to that I have mentioned that the savings and loan associations had pretty much had their way in attracting more savings of commercial banks, because after being given the green light

and the commercial banks becoming much more aggressive the national figures look just the opposite, quite the reverse. For example, in 1965 of the household savings market commercial banks took in thirteen million dollars, 13.3 million, as opposed to savings institutions or savings and loan associations, which only took in 8.5 million. In 1966 it was 11.9 as opposed to 3.6. In 1967 it was 15.6 to 10.7, so that in every year since commercial banks have gotten their ability to go out and really compete they have out-competed the S & L's even by paying a lower interest rate, but not as low as they had to in former years, so I would say that this indicates to me that in this area, as well as in the consumer lending area, that there are very definite competitive advantages which commercial banks do have.

Q Professor Edwards, what is the importance of the fact that commercial banks can offer a variety of services to their customers?

[fol. 604] A Well, that may be the key to everything that we have been talking about. We have said that statistics indicate there are competitive advantages. Why? Well, perhaps the biggest factor in that is this department store aspect of commercial banking, the fact that they can offer all types or a large range of financial services as opposed to each of the types of competitors we are talking about, sales finance, insurance companies, savings and loans, et cetera.

Now, the kind of things they may do—of course, if you have to have a demand deposit in a commercial bank and as we say everybody in Phillipsburg practically did, it is very easy and convenient to open a savings account rather than shop around and try to find a higher rate. You do it because it is convenient and easy, and commercial banks, of course, encourage that kind of thing. They also encourage—we have heard statements to the effect that they make loans to get deposits. Well, that is true. They do make loans to get deposits, and they encourage this kind of growth in their depositors. That is another tie-in. There are several tie-in relationships I think you could find in commercial banking, and it is this aspect which may explain the consumer preference, shall we say, for the services the commercial banks offer as opposed to the very similar type services offered by non-banking institutions.

[fol. 605] Q Are you familiar with the services offered by the defendent banks?

A Yes, I am.

Q Do you have an opinion as to whether Phillipsburg National and Second National are commercial banking institutions?

A Yes, I do. I don't think there is any question about it, they are commercial banks. They have a legal charter that says they are commercial banks, and they have the ability to offer a full range of services which a commercial bank can offer, at least, the legal ability, and I think economically they have the economic ability to offer by far the majority of those services, at least.

In fact, if I may just comment one more time on that, in reading the defendants' brief, as I have, I noted the point that the cluster of services which a bank is presently offering could determine whether or not this was a commercial bank, or some other kind of institution. I don't know whether it is exactly that; if I am misconstruing, I don't mean to. But the "cluster of services" argument did seem to get a lot of attention.

I must say I didn't like that argument because I feel that the cluster of services which a bank is offering will be different under different circumstances. And what determines the cluster of services is the demand in [fol. 606] the area as well as the portfolio policy of the bank. Either one of those things might change any time—it is conceivable, at least—and a commercial bank could simply alter its portfolio and it would no longer reflect the same kind of cluster of services. So I think to make the definition turn on the specific cluster of services is not a good way to define a commercial bank. In fact, if you look at that type of approach to the problem, I think you would have to exclude practically ten thousand banks out of fourteen in the United States as being commercial banks, because most of the banks in the United States are small banks, and most of them have a cluster of services which look not too dissimilar from the defendant banks in this case. So I think you would have to say that ten thousand out of fourteen thousand banks simply aren't banks, by that standard. And I have difficulty going along with that approach.

* * * *

[fol. 607] Q Professor Edwards, based on the factors you have testified to, with respect to the uniqueness of certain commercial banking services, the possible competitive advantage with respect to certain banking services, with respect to possible consumer preference for certain banking services, and your reference to the supermarket aspect of commercial banking activities, do you have an opinion as to whether it is appropriate to consider commercial banking as the product market in this case?

A Yes, I do.

Q And can you express that opinion?

MR. MEYNER: I object, your Honor.

THE COURT: Hold it just a minute until we get this clarified.

Professor, can you break down this product market that you are considering, in terms of the services?

THE WITNESS: Can I break it down?

THE COURT: Yes. Tell us what services you have considered that go to make up the product market.

MR. WEINBAUM: The commercial banking market?

THE COURT: The commercial banking market.

[fol. 608] THE WITNESS: Well, in my own research, as well as my examination of the defendant banks, I looked at all the services they offer, which would be consumer lending, business lending, mortgage lending, savings deposits, demand deposits, et cetera.

THE COURT: Come on with the "et cetera." I don't know what you include in the "et cetera."

THE WITNESS: Well, let's see, have I missed any? Basically, I think that would be it, consumer lending, mortgage lending, business lending, passbook savings, deposits, time deposits, I did consider the larger market, like certificates of deposit as a conceivable separate market. I did not divide, say, mortgage market into—mortgage loans into possible sub-markets. That's pretty much as far as I went.

THE COURT: If I heard you correctly, you didn't include demand deposits, either.

THE WITNESS: Yes, I thought I said that. I'm sorry, if I didn't, I certainly included demand deposits.

THE COURT: I may not have heard you fully. Is that it?

THE WITNESS: And, of course, the line of commercial banking.

THE COURT: Well, the reason I asked you this [fol. 609] question was to bring out what services you considered to be within the ambit of the product market as you have defined it. I think you have given us that. If you haven't, go ahead.

THE WITNESS: I would say all of those are possible market products of commercial banks.

THE COURT: All right.

BY MR. WEINBAUM:

Q In your opinion, Professor, is it appropriate to look at any one service of a commercial banking institution with regard to considering banking structure?

A I wonder if I could have a little flexibility in answering that question?

Q Certainly.

A I think it may be appropriate to look at many product markets in commercial banking. And I have named some of them that it may be appropriate to look at. I think it is appropriate and meaningful, for some purposes, to look at, for example, the savings deposit market, say, the passbook savings market. I think it is appropriate for some purposes to look at the demand deposits market. I also think it is appropriate to look at the total sum of services, or total cluster of services offered by a commercial bank, which is commonly considered—commercial banking—as a line of commerce. And if I had to choose which is the most [fol. 610] meaningful to look at, I think they are all meaningful to look at. But I would say the commercial banking, as a line of commerce, is clearly meaningful to look at when considering the competitive impact of a bank merger, It may, for some other purposes, be also important to look at other submarkets.

THE COURT: Tell me if I am correct in my understanding of your last statement. The impression I had, from what you said, that you would recommend in defining the line of commerce, product market, that the cluster of services be considered.

THE WITNESS: Yes. And the cluster—to be specific, the cluster of services being offered by defendant banks in the

case. In other words, I would consider looking at—When you take a particular bank, if you look at total loans and total deposits, what you find is an entire range of savings customers. Some are certificate of deposit customers and some are passbook customers. Some are demand deposit customers. If you look at total loans you are going to find some consumer customers, some business customers, some mortgage customers.

THE COURT: I may be getting into a little confusion here, so if my question indicates it, be patient with me. Do we approach this from the [fol. 611] standpoint of what a commercial bank has capacity to offer, regardless of whether it is offering the service or not, or from the standpoint of what it is actually offering? By way of illustration, we had testimony in this case that in the loan area, the lending area, the major part is in mortgages.

Read the first part of my question.

(Record read.)

THE COURT: That was the question.

THE WITNESS: I think I possibly misled the Court in some confusion here when I didn't clearly distinguish between what I would call the best theoretical approach to the subject and the approach we have to take limited by statistics.

Now, in theory, we want that entire cluster of services which a commercial bank has the ability to offer at any one time. And that is the way I would attempt to appraise the competitive impact of a merger, by looking at that type of line of commerce, that cluster, the full range of commercial banking services.

Now, it is quite clear that when we get into a specific case we may run into the problem that defendant banks are not all offering all of the services they could be offering, or each bank may be [fol.612] offering somewhat different services. So at that point, in order to appraise, for example, what relative shares of a commercial banking market they have, we have to, by necessity, use a rather approximate—an approximation to that theoretical cluster of commercial banking services. And what we normally look at would be something like total loans and total deposits, admitting that it doesn't measure everything we would like it to measure, but it is the best measure we have. And therefore that is what we use.

THE COURT: Well, Professor, thinking in terms of the competitive market, is it true that the ideal situation would be one where all commercial banks within a specified geographical area are offering the same type of services?

THE WITNESS: Ideal from what point of view?

THE COURT: Let me go on. It is a little difficult to put this in a question without some explanation. It occurred to me as I was listening to your testimony that where some commercial banks are not offering a particular service you could very well have within a geographical area very little competition as to that service, and intense competition as to others which all were offering.

[fol. 613] THE WITNESS: That is conceivable.

THE COURT: Go back to the question before I explain what I was thinking about.

(Record read.)

THE WITNESS: I believe my answer was that that is a distinct possibility. I don't really know what to do with it. It is very possible that you could have two banks in the same area and neither one of them offering a service which overlaps at all. And you have two monopoly situations.

THE COURT: Correct.

THE WITNESS: But I would say if you had that situation you clearly shouldn't use certain kinds of statistics to measure the competitive impact.

THE COURT: Following that course of reasoning, is it true that to the extent that one of the commercial banks in the area, or more, are not offering the full cluster of services, and to the extent of the absence of such offering, that there is dimunition of competition?

THE WITNESS: If you are driving at the point, for example, that there could be—Well, let's really talk about specifics. I mean, if you are driving at the point that a bank merger could stimulate competition in some product lines-

[fol. 614] THE COURT: I am not driving at that at all. I am just asking a question. I am not suggesting that it would or would not.

THE WITNESS: See, here is the trouble I am having. If you have two banks in an area, and neither offers trust services at the moment. And now one does offer trust services. I am having trouble saying that that is more

competition, because it is not a full enough kind of explanation. There may be no service offered initially and consumers may be very poor, I mean poor off, worse off, by not having any trust services offered in the area. Now, if we have another bank offer trust services, it would appear that perhaps this bank is in competition with New York banks, which were formerly offering trust services.

THE COURT: Professor, do you consider the offering of a trust service as important in serving the needs of a community?

THE WITNESS: It is hard for me to judge that. I would say that there are many fine substitutes for trust services. So I really don't think it is a very important banking service.

Now, do I think it benefits the community? Yes, I think the more alternatives there are for the [fol. 615] consumer to consider, the better off he is.

THE COURT: All right, counsel.

BY MR. WEINBAUM:

Q Professor Edwards, what approach do you use in considering geographic market in a bank merger?

A Well, basically, I have used two. One is what I call—for lack of a better name—a priori examination of the—

THE COURT: What was that?

THE WITNESS: A priori examination of the— What I mean is—

THE COURT: I am not familiar with the term. Would you spell it?

THE WITNESS: Yes. It is "a"—another word—"p-r-i-o-r-i." But what I am driving at is that without examining the banking market as such, without examining bank behavior, bank customer behavior, I first look at the area itself, to determine whether, and to what extent, there is economic, commercial, social integration within a given area. Without examination, in other words, without very close examination, when you look at an area, I think it can't be denied that you immediately jump to a conclusion. You say, "Well, this town is in the middle of nowhere. It is a hundred miles from every [fol. 616] other major town." And you immediately jump to the conclusion, I think, "Well, this is probably a reasonable banking market." Or in the case of Phillipsburg and Easton,

you might look at the area, and you might say, "Well, there is only a bridge between them" And you would expect that possibly this could be the same market.

So first you sort of draw a line around some area which appears to you to be some kind of integrated unit. And then you attempt to look at all the statistics you can get, which will verify whether it is or not. You may have been wrong and you may be right. And indeed—after that you extend the boundary a little further. For example, we might extend the boundary down to Bethlehem or Allentown. I might say—if I had used the same test would I have included these areas; and if not, then I would bring the boundary back, to say Easton and Phillipsburg. Or if I look at Phillipsburg and Easton and find that by using these statistical tests Easton and Phillipsburg are not a very integrated area, then I would say, "Well, I guess I was wrong," and I would have to collapse the area a little further.

So that the first test, really, is to pick different alternative areas and try to determine the [fol. 617] degree of economic and commercial integration within those areas.

Q And are there any other tests you use, Professor?

A The second test is to examine the banking market in more detail. It is conceivable, for example, that even though you have a commercially and economically integrated area, it still may not be a good banking market, or an appropriate banking market in which to appraise, say, the competitive impact of a merger.

Thus I try to find specific banking data to indicate whether it is a unified area. There are several different kinds of data you might look at, but to make a general statement, I look at the distribution of customers of the banks, and I attempt to determine the sensitivity of the customers in each area with respect to price differentials within the proposed market area.

Maybe I should say a word about the price sensitivity measure. A common way of approaching markets for economists is to say: Well, a market is simply a bunch of buyers and sellers who get together and determine the price. Now, if they are in contact with each other, and have good information about what is going on in the market, which is pretty much by definition what the market means, that the buyers are in contact with sellers, know what is going on-you would expect, for example—you would not [fol. 618] expect

substantial price differentials to exist within that market, because if it is advantageous for a customer to move, to take advantage of a lower price, he does so. You don't buy a television set for $400 when you can buy the same set across the street for $300. So one of the characteristics you would expect in looking at this is that you would expect a distribution of customers to be related to the price differentials which exist within a market. And I will say more on that later.

Q Have you considered these tests you described, Professor Edwards, in light of the present merger?

A Yes, I have.

Q And using these tests, what geographic area or areas have you concluded would be appropriate for assessing the competitive effect of this merger?

* * * *

[fol. 620] Q Can you tell us what you did, Professor Edwards?

A Yes. First I went to the area personally and just simply looked around. For example, I asked myself is it plausible for Phillipsburg residents to do their food shopping in Phillipsburg, or to do their clothing shopping in Phillipsburg? Where would they have to go to do it?

I found such evidence as, say, the Hillcrest Shopping Center, Falk's Shopping Center, others like Orr's, for example. Now, that is not statistical evidence, that is [fol. 621] simply observation, I would say, and it is a very unrandom kind of sample, what streets I happen to—

THE COURT: Pardon the interruption. It will be very helpful to me ultimately in working on this case if you would give the location of these establishments that you mentioned. I know I could find them, but it would take longer and no doubt you know exactly where they are located.

THE WITNESS: Well, the only one I remember in particular is the one along Memorial Highway near the Ingersol-Rand plant, a big shopping center. I couldn't tell you where Orr's Department Store is located, for example, exactly.

MR. MEYNER: Would you repeat that last answer, please? (Record read.)

Q On your trip to the area, the Phillipsburg-Easton area, and a greater area which you indicated yesterday you had covered, can you tell us what else you saw in Phillipsburg?

A Yes. I asked the questions, for example, of where could Phillipsburg residents work, if they wanted to work. And there are several large plants in the area. There is the Baker Chemical, Ingersol-Rand. They could work there, if they wanted to work. There are, no doubt, as in most [fol. 622] small towns, other places they could work. I don't know. I mean there are stores along the main street there which probably do employ some either self-employed people or some additional help.

But what I am driving at in my analysis is, I am trying to determine whether—and when I say Phillipsburg is an economicially and commerically integrated area, I am trying to determine whether most people, most Phillipsburg residents could satisfy most of their needs within the community itself. Now, by needs I mean, could they work there, if they wanted to? Could they shop—food shop there, could they do clothing shopping there? My own observation in the area indicated to me that—without pursuing it further, with statistics—that yes, it was fairly a self-contained community, not totally, but it clearly was a fairly self-contained community.

THE COURT: Counsel, I would like to interrupt you again. Were you applying a test of whether they could satisfy their needs in Phillipsburg as distinguished from what they were actually doing?

THE WITNESS: I think you have to start with the theory before you can get to the fact.

THE COURT: All right. Go ahead.

THE WITNESS: And I am trying to phrase the appropriate test and then possibly present what [fol. 623] evidence is available in that area.

THE COURT: This illustrates what I had in mind. I know some very small areas in which I could survive and satisfy all of my needs. But I might find it, and others within that area might find it desirable to go outside the area. That is why I pose the question. Did you approach this from the standpoint of what they could do as distinguished from what they were actually doing?

THE WITNESS: Yes, I did.

THE COURT: All right.

THE WITNESS: Unfortunately, there is just simply not a lot of available information of the type you are suggesting. So that I did what I could. Now, what information is available in this case seems to me the—some of defendants' exhibits, which they have presented on places of work versus residency, and, too, the Journey to Work Survey, and the census.

Now, I wanted to say before this, besides looking at where they shop, and things like that, I looked at employment. Could they work? And I tried to get evidence wherever it was available.

Now, I think the most up-to-date and convincing evidence I can offer to indicate that Phillipsburg is more commercially and economically integrated than some [fol. 624] other areas, like Phillipsburg-Easton or Phillipsburg-Allentown, is to look at that Journey to Work Survey. That is one type of economic evidence.

Now, if you look at that, you will find there is a very, very large proportion of the sample population living and working in Warren County. And that doesn't necessarily mean Phillipsburg, but it means Warren County. We simply don't have the evidence on Phillipsburg alone, or Phillipsburg and environs alone. So we are using the next best thing we can, which is a sample survey of the entire metropolitan area as to where residents work.

Now, if I had to pick an area, for example, which was the most—an area which might first intuitively be considered a banking market, like Phillipsburg, you might take a town, the city limits of Phillipsburg, and you might say: Let's examine that for the degree of commercial and economic integration. Doing that I found that based upon the evidence of what I saw, and this place of work sample, most residents of Phillipsburg, the majority of them—put it that way—the majority is a safe statement—the majority of Phillipsburg resident clearly work in Phillipsburg and environs.

Q Excuse me, Professor. Your reference to the [fol. 625] Journey to Work information, is that Government Exhibit 47 you refer to?

* * * *

[fol. 626] A Yes. The exhibit indicated that, as I say, by

far the majority of Phillipsburg—or Warren County residents—I think the exact figure is something like 93 per cent of the residents of Warren County work in Warren County.

Q Professor, that percentage is 75 per cent.

A I'm sorry. 75 per cent. I don't have the figures in front of me. I wonder if I could look at that exhibit.

MR. WEINBAUM: May I hand the witness a copy?

THE COURT: Yes.

(Handed to the witness.)

A (Continuing.) Yes. I'm sorry. It shows that 75 per cent of the Warren County residents also work in Warren County. And I would have to conclude from that, that since the larger proportion of the population of Warren County consists of Phillipsburg and environs—area, I am talking about—that this sample, although possibly—probably would diminish, would probably go down from 75 per cent to something lower—I think it would be considerably above, say, 50 per cent.

Q Does the fact that this is a 25 per cent sampling, in your opinion, affect the survey?

A Not at all. I was rather surprised yesterday to hear a 25 per cent sampling questioned. And after hearing the testimony yesterday I looked around for some examples of [fol. 627] samples which are relied on quite a bit by, say, the Government in their employment policies. For example, the sample used to determine the unemployment rate at any one time, or the per cent labor force participation at any time. That sample is a .1 per cent sample of the population of the United States. Far, far less than a 25 per cent sampling. And yet the error of that sampling is very small. It is .3, for example—one standard deviation is .3 per cent in that sample. Very small.

So that the point I am making is that it is pretty elementary statistics that the per cent of a population you take in a sample is not relevant to determining the accuracy of that sample, it simply is not a relevant thing to bring up.

Now, what is relevant is the total number of observations you have in a sample. In the, for example, labor force sample I gave you, which is very accurate, they sampled 50,000 households in the United States. A 25 per cent sample of the standard metropolitan area of the Phillipsburg-Easton and Allentown-Bethlehem would be actually almost as many

people. So that it is very hard for me to—in fact, I have no hesitation about using a sample of that magnitude in this case.

Q Professor Edwards, did you go across into Easton and look around the Easton and immediate environs? [fol. 628] A Yes, I did.

Q And would you please comment on what your observations were with respect to that area.

A Yes. Using the same test, which is what I might call a casual empiricism, and then the other test of looking at the Journey to Work sample, I also concluded there could very well be a large amount of commercial and economic integration between the Easton and Phillipsburg community. For example, if you look at the Journey to Work sample, it shows that—I am not sure how you made this up. Let's see, places of residence—I may have to refer to the original.

* * * *

[fol. 629] Q Before the recess, Professor, we were addressing ourselves to Government Exhibit No. 47, and I would like to ask you, Professor Edwards, what, if anything, these figures indicate to you on the question of the economic integration of the standard Metropolitan statistical area?

A Well, judging the degree of economic integration on the aspect of where people work, as opposed to where they live, I would have to conclude that there is not a substantial degree of economic integration within the areas of the standard Metropolitan statistical area. For example, the figures show that by far the majority of residents of Warren County work in Warren County. The figure, to be exact, is 75.3 percent. In addition, it shows that the second area, the second major area from which workers from Warren County come, in other words reside, would be Easton city itself, and that is seven percent. In other words, seven percent of the people working in—of the work force of Warren County reside in Easton.

As you go further and further away from Phillipsburg, you go west, in other words from Warren County, the figures drop, I think, dramatically. For example, Allentown, the [fol. 630] furthest area away, a major city, shows only a .1 percent. In other words, only .1 percent of the people who work in Warren County live in Allentown. In fact, Lehigh County itself only accounts for .4 percent, so I would have to

say when we are talking about .1 and .4 percent that there is just simply not many Lehigh residents working in Phillipsburg or Phillipsburg environs or Warren County.

Now, we do turn it around and we can look at how many Warren County residents work in Northampton County, which, of course, includes Easton. Here we would find that only four percent—four percent of the Northampton work force resides in Warren County, and again if you ask how many people working in Lehigh County reside in Warren County it is .1 percent, so that it is very—my conclusion would be just looking at these figures that Warren County itself, as I say, since Phillipsburg is the largest by far, represents by far the largest proportion of people in Warren County. I would have to say that the majority of Phillipsburg's residents work in Phillipsburg or in Phillipsburg or environs, or in Warren County. I would have to say, if I had to look for another area in the entire Metropolitan area which would be a candidate for inclusion in the "economic market" or in the particular economic and commercial integration, I would have to next look to Easton city, because Easton provides some members of people who work [fol. 631] in Warren County and vice versa, but I would have to definitely exclude places as far away as Allentown and Bethlehem, for example, which have only a very small number of workers working in Warren County or Warren County residents working in Bethlehem and Allentown. Thus I would say on this basis alone Phillipsburg and Warren County is an economically integrated area, but there is some—clearly there is some evidence that Easton is also integrated with Warren County in terms of employment.

Q Is this conclusion, Professor Edwards, based as well on your observations in the area and your familiarity with it?

A Well, again, to use the phrase "casual empiricism," I don't have hard fact statistics on the number of people, Easton Residents who use the Hillcrest shopping center or Orr's department store. I don't have those facts, but all I can say is it would be reasonable to suppose that people work near where they live and shop near where they live. That is a general statement.

Q Are you speaking of the majority of people, or what do you mean by people shopping where they live?

A Well, it seems to me that if I were living in the downtown area of Phillipsburg I would probably rather drive up to Memorial Highway and shop up there rather than going into—well, the few times that I have been in Easton it [fol. 632] is very congested, the downtown area, so I would rather probably drive up where there are parking facilities, et cetera, and there are shopping areas in Phillipsburg, and I don't know—I saw people there. I assume they were people who lived in Phillipsburg. They could have been people who lived in Easton, but it would make more sense to me to pick a convenient shopping location near where you live.

Q Professor Edwards, you spoke of another test in connection with arriving at an appropriate geographic market in a merger case. Can you explain what this other test encompasses?

A Yes. First let me say why I did it. I don't think it is sufficient to look at the geographic integration in an area, even though it may be great and claim that that is the revelant banking market. That is certainly a good first approach, but what may be an integrated economic area may not be a very compact banking market, so I think we have to do two tests. First I think we have to somehow define the area within which we might begin to define the banking. Then we have to examine the banking.

What I have done by the first step is to begin to limit the market. I have said that I am going to look to Phillipsburg. I am going to look at the Phillipsburg-Easton environs, because there is some integration, and I am not going to look at the Allentown-Bethlehem area as [fol. 633] being too remote, because I can't find much rationalization to include them without looking at banking behavior. Now, looking at banking behavior what I looked at, I tried to get evidence. I asked for evidence which was given to me on the percentage of the business that each bank does, say in Phillipsburg, where it draws that business from.

One possible statistic I looked at was where I asked the question "Where do the defendant banks draw the majority of their business from at the present time?" The answer to that question is that by looking at either total loans or total deposits of the banks, which again is a measure of trying to approximate that cluster of services we call commercial banking and would like to call commercial banking—looking

at that I found that approximately eighty percent of the business in Phillipsburg and environs of total deposits, and somewhat less, approximately—of these two defendant banks approximately seventy percent of their total loan business in the area. That is one type of statistic..

The other type of statistic is to ask yourself do banks outside the area do much business with Phillipsburg residents. Now, the only place I could get information on that was for me to ask government counsel to provide it for me, to go out and ask the bankers in the area whether they do much business, which they then did, and then reported [fol. 634] to me that they do—

THE COURT: Wait a minute.

MR. MEYNER: I object.

THE COURT: Is this based upon something in evidence, or merely upon something counsel related?

MR. WEINBAUM: Your Honor, initially in preparing the case before Professor Edwards could reach any conclusions we had to get some preliminary information.

THE COURT: That is all right in preparation of the case, but we are on trial now, and he cannot base his opinion on what he was told by counsel.

MR. WEINBAUM: No, sir.

THE COURT: Or what came to his attention during the preparation of the case. He can testify on the basis of what is in evidence.

MR. WEINBAUM: All right.

THE WITNESS: I did look over some previous testimony in this case which counsel gave me the transcript of, and I looked that over, and although it wasn't terribly—

MR. MEYNER: I think it should be identified.

THE COURT: Do you know the volumes?

MR. WEINBAUM: We gave Professor Edwards all of the testimony, your Honor.

[fol. 635] THE WITNESS: I skimmed a lot and tried to find the correct sections, the sections which would indicate what I am interested in, and the question I was interested in was whether the witnesses, who were bankers outside the Phillipsburg area, do much business in Phillipsburg, which would exclude, say, Mr. Leupo's testimony. I wasn't particularly interested in his testimony because it wouldn't have helped me answer that question. Looking at some of the

testimony—perhaps I should start with one that is freshest in my mind, which was Mr. Jones yesterday. I was excluded from a lot of that testimony.

THE COURT: What do you mean, you were excluded from a lot of that testimony?

THE WITNESS: I mean I had to leave the courtroom.

So I didn't hear a lot of it, but I did hear him make some remark to the effect that they don't do a lot of business for example in Allentown and Bethlehem and so that is the kind of thing that I am looking for. Now, I can't point to a specific sentence—I mean in his testimony—that indicated that he doesn't do much business in Phillipsburg, [fol. 636] but in other testimony, say Mr. Lewis' of the Hackettstown Bank, I think he clearly said that he just didn't do a lot of business in Phillipsburg. It was very small, and Mr. Rhoades from the Nazareth branch, as well, only eight miles north of Easton seemed to indicate that he didn't do very much, either, in Phillipsburg, and Mr. Wall and Mr. Bowers—Mr. Bowers, I believe, who was from Washington, New Jersey, only ten miles away, ten or twelve, said that he did some but, for instance, I think he said he did something like ten percent of his consumer installment loans in Phillipsburg. Now, that ten percent, I assume and understand that is ten percent of his loan portfolio and not ten percent of the Phillipsburg banking business. I think we have to be careful to draw that distinction here.

THE COURT: Professor, in reaching an opinion as to a geographic market did you take into consideration not only the present market but also the potential in the immediate future?

THE WITNESS: I think the potential market is taken into consideration by the economic and commercial integration test. I think what potential market is is the largest area that you can find where there is some commerical and economic integration. I don't [fol. 637] mean to say that the Easton National Bank might not some day go to Philadelphia and solicit a trust account or New York, or some other place. What I mean to say is that the best approach that we can use to try to determine where they may go in the future is to ask what areas are they now working on. What areas within which they are now operating are commercially and economically integrated, or where is the trend, because the banks are likely

to follow local communities rather than to ignore local communities and go elsewhere, so I think that takes into account potential. When I talk about the banking test, that is quite clearly not taking into account potential. It is focusing on what is actually the banking market of the community as the people now see it and as the banks now behave.

* * * *

[fol. 638] Q What other factors in addition to this customer data did you use in reaching conclusions about the appropriate geographic area or areas?

A Well, in addition to looking at where the banks in the area drew their business, I also looked at the distribution of customers. I looked at that information. In other words, the first thing I said is where the banks draw their business from, and I compared it to interest rates which might be prevailing in the area to find out whether or not the customers seemed to be sensitive to interest rate differentials because, as I said before, I believe that is one of the standard tests of whether we have really got a market area here, whether consumers in one part of the market react to what is going on in another part of the market, especially with respect to prices.

It is here you have to talk about a specific customer, and I picked one customer because it seems to support what I wanted to say in this area—or what I wanted to examine—let's put it that way.

Q Are you talking about the interest rate differential?

A That is right. I asked myself are there any interest [fol. 639] rate differentials in the area. Perhaps I should just explain what the test will do. First, in a very perfect banking market where consumers will move to take advantage of price differentials and they have the knowledge of the existence of price differentials you would expect the interest rate to tend towards the same rate. Now, if within an area you find substantial interest rate differentials existing over a long period of time, this indicates that the customers are not moving to take advantage of a higher rate for whatever reason. They are just simply not moving to do it, and if customers were moved those rates would become more similar or exact in the extreme idea. I don't mean—this test is not symmetrical. For example, if you find two areas with identical

interest rates that doesn't imply by any means that they are in the same market area. For example, I am quite sure that you can find a town in California which has the same interest rate, we will say on passbook savings, as a bank in Phillipsburg has. That, of course, doesn't mean that they are in the same banking market, but we would never have begun that approach by the use of these tests on economic and commercial integration because we would have decided California is not integrated with Phillipsburg, New Jersey. After completing the first test we have limited an area which is what I consider a reasonable area. Now I look at some price [fol. 640] differentials within that area, and to be specific, the differences on passbook savings, and I picked passbook savings in particular because passbook savings, based upon some studies I have read, and from my own knowledge in this area, it is indicated that passbook savings customers are indeed rather sensitive to interest rate differentials. They move quickly to take advantage of higher rates whereas some other kinds of customers are not too sensitive to that. For example, I don't think the consumer loan customer is a very sensitive type of customer. This is based upon some reading I have done and other surveys on bank customers, so I have tried to pick a commodity where you would have a price-sensitive customer. In doing that I found in the area of Phillipsburg-Easton that there existed a rather substantial interest rate differential on passbook savings for a long period of time.

The banks in Phillipsburg were paying three and a half percent on passbook savings for the period I am interested in, say 1966 to 1968, because I realize there was a change. They were paying three and a half percent on passbook savings, and right across the river in Easton the banks were paying three percent on passbook savings. Now, you would expect in the face of that interest rate differential in favor of Phillipsburg banks, you would [fol. 641] expect the Phillipsburg banks to be able to draw and indeed to have attracted many Easton customers in passbook savings into their banks, and yet the evidence surprisingly enough indicated that they did not. Only a small proportion of this passbook savings accounts came from Easton. That was a preliminary piece of evidence which led me to the conclusion that, well, perhaps even though Phillipsburg and Easton are somewhat economically integrated

as communities, they may still not be very good banking markets in the sense that Phillipsburg-Easton banks may not indeed be competitive, or at least the banking customers in Easton didn't consider the Phillipsburg banks to be banking alternatives, otherwise why would they have suffered a lower interest rate cost for all these years?

Now, Warren County is another one. During the same period Warren County banks, that is, Washington, Hackettstown, et cetera, were paying four percent on their passbook savings as opposed to three and a half percent in Phillipsburg and yet the testimony of Mr. Lewis—Mr. Bowers, I am sorry—indicated that they, too, didn't derive a lot of business in the passbook savings area from Phillipsburg even though they were offering a better price to get that, and from that I concluded that there was a fractured banking market, that it was not one unified banking market by any means. These banks were operating in somewhat [fol. 642] separated or distinctly different banking markets.

Q Professor, on this interest rate opinion, would you alter your conclusion based on the fact that recently the banks in Phillipsburg and the banks in Easton have raised their rate to four percent?

A Well, I found—this one of the parts of Mr. Jones' testimony yesterday I did happen to hear. I found that it was very revealing. I think I have to admit that the fact that the Easton and Phillipsburg banks simultaneously went to four percent rate—it is the simultaneity of the move that I would like to emphasize. There is evidence that they are in competition. Now, it could be coincidence. As I said, two banks may have done the same thing, one located in California and one in Phillipsburg. Mr. Jones' testimony did not indicate that they moved because the Phillipsburg banks moved but because other banks moved within the Easton community, but I would say that, yes, that is evidence that they might be in the same banking market, but I wouldn't emphasize that more. It doesn't seem right to me to place a great deal of emphasis on the fact that they are now paying the same rate and have moved to it simultaneously when four years prior to this they existed with an interest rate differential of a half percent and one percent all the way down to Allentown and Bethlehem—Allentown and Easton. There was a one percent [fol. 643] differential. So I think we

have to say that this is somewhat conflicting evidence, but the existence for a long period of time of this interest rate differential to my mind is a little more convincing than one simultaneous move on prices.

[fol. 644] Q Professor Edwards, does the existence of a state boundary, in your opinion, have any effect on banking markets?

A Yes. Although I have to be absolutely frank. It is very, very difficult for me to explain why. What evidence I base my conclusion on here is my own economic research, as well as some other studies which have been done. But basically what I found was that examining prices on—taking metropolitian areas which were divided by a state boundary, I examined the interest rates on one side of the boundary versus those on the other side of the boundary, and I found that the differential was greater than you would expect by mere chance in every case.

Now, what that indicates simply again is that here they are existing very close together, but for some reason the rates are significantly different in these two sides of the state boundary.

Now, I find that surprising, that it exists. But I did find it existed. Other economic researchers have found that it does exist. And it does exist. I am at a loss to really explain why people would hesitate to cross state boundaries. But they seem to hesitate.

Q Professor Edwards, what factor or factors, in your opinion, dictate a customer's choice of a bank?

A Well, by far the most important factor is convenience. [fol. 645] There is convenience—and here I separate into convenience of residence and convenience to job location. Again, my reading in the area, and samples which have been done, indicate that approximately—on two samples about the same—40 or 45 per cent of the people choose their banks as a result of convenience to residence alone. Another 13 per cent, or so, choose it because of convenience to jobs. So together that is a rather large number of people choosing their bank as a result of convenience alone. And this together—of course, if you put this together with the labor—Journey to Work Survey, it would indicate that the most likely choice of an average resident of either this Phillipsburg or Easton area is

the Phillipsburg or Easton banks; or, indeed, the Phillipsburg banks for a Phillipsburg resident.

* * * *

[fol. 646] Q What other factors besides convenience, Professor Edwards, determine a person's choice of a bank?

A Well, I think the other factors—important factors would be where he gets the best price, for example; where he gets the best service. I think that would be important. Also, personal relationships might come into play here. If you know a banker in a certain area, you might go to his bank. Presumably you might get better service from him.

Q Are you familiar with the location of the offices of the defendant banks?

A Yes.

Q And where are they located?

A Well, the two downtown offices of the defendant banks are located very closely—a half-block of each other in the downtown Phillipsburg area.

Q And are the branches located within Phillipsburg and the immediate environs?

A Yes, the branches are within the Phillipsburg and immediate environs. And again they each have branches up [fol. 647] on Memorial Highway, near the shopping center, and the Ingersol-Rand plants, up there.

Q Can you explain, Professor, your understanding of the New Jersey banking laws as they apply to this case?

A Yes.

* * * *

A Yes. Well, my understanding is that banks in New Jersey cannot branch outside their county areas, or within—into a community which has a head office or a home office of another bank. I felt this was—I really should have brought this out earlier, but I feel it is an important [fol. 648] issue, because the geographic distribution of customers I was talking about went to the point, "Do customers move to banks within a certain area, like the Phillipsburg-Easton environs? Do the Easton customers move to a Phillipsburg

bank?" That is what I was talking about with that price–customer distribution test.

Another test which might be appropriate in other areas, or in other cases, would be: Can the banks move to the people? Can the Phillipsburg bank move to the Easton people? Or can the Easton bank move to the Phillipsburg people? I didn't mention it because, due to the state branching laws, it is quite clear that they cannot, the bank cannot go out to get the customers, in terms of their branch locations. And the customers, as I said, in my other test–the customers don't seem to go to the banks. So you put both of them together and you get a picture that says that they really aren't in the same market, banking market.

Q Professor Edwards, could you tell us, on the basis of the facts, the information that you have discussed thus far in your testimony, what market or markets you believe are the appropriate ones, geographic markets, in this case for assessing the competitive effects of this merger?

A Based upon the two tests I have administered here, I [fol. 649] would have to come to the conclusion, which is a rather surprising conclusion, I have to admit, that the Phillipsburg area, or environs itself, is an appropriate banking market. But I would want to be quick to add that in the first test I said that there was a certain amount of economic and commercial integration between Phillipsburg and Easton environs. So because it is such a limited market, Phillipsburg, which does surprise me, myself, I would have to say that I would not–because both areas, I believe, to a certain degree, meet the first test, it is possible that the Phillipsburg-Easton area might be a reasonable market definition, as well, in terms that it would take in the potential market of the banks involved. But as of today, it seems to me that the Phillipsburg market is a different market than the Easton market. At least that is what I can find when I look at the statistics.

Q When you refer to the Phillipsburg and environs market, Professor Edwards, what area are you speaking of?

A Well, I am speaking of Phillipsburg itself, and then there are four or five surrounding communities. And they would be Alpha Borough, Greenwich Township, and there are those two that I can never pronounce properly–Lopatcong and Pohatcong, or something like that.

Q Greenwich?

A I said Greenwich Township, I believe. So it would be [fol. 650] Phillipsburg, Alpha Borough, Greenwich Township, Lopatcong and Pohatcong.

Q And when you refer to Easton and environs, what area are you speaking of there?

A Easton itself, together with five or six other areas. And they would be the Forks, Williams, Palmer Townships, and Glendon Borough, Stockerton Borough, Tatamy Borough, West Easton Borough—I think that's pretty much it—Wilson Borough, too.

Q And Glendon Borough?

A Glendon Borough, I think I said that. Glendon Borough.

THE COURT: I think if I followed your testimony, you designated the Phillipsburg area and environs as an appropriate market, but then added that you wouldn't rule out as an appropriate market Phillipsburg-Easton area and environs, correct?

THE WITNESS: That is correct. Because the Phillipsburg-Easton environs both meet the degree of economic and commercial integration test, to some degree.

THE COURT: In considering the Phillipsburg-Easton area and environs, did you give consideration to the provisions—to your understanding of the law of the State of Pennsylvania with respect to [fol. 651] branching of banks?

THE WITNESS: Well, I know they can't branch across state lines. Do you mean that?

THE COURT: Well, we know that. Well, never mind what we know, but I only want an understanding of what you think you know on it.

THE WITNESS: No, I did not—

THE COURT: It is your understanding that they can't branch across state lines. But what about branches in Pennsylvania?

THE WITNESS: I did not read the Pennsylvania bank statute, the relative one. So I don't know what the banking statute is. My understanding, without reading it, is that they cannot branch outside their county, that they have a head office in.

THE COURT: All right.

MR. MEYNER: Your Honor, maybe we will have a chance to point out that that is inaccurate.

THE COURT: As I indicated before, I just want to know, if he took that into consideration, what his understanding of the law was.

BY MR. WEINBAUM:

Q Professor Edwards, in your opinion, is it proper to define a geographic market in terms of every town or city from which a bank draws business? [fol. 652]

A Clearly not. Again, going back to what is a market, it is a group of buyers and sellers who have close contact with each other. And their actions are reflected in—what they do reflects, or has something to do with what the prices will be, for example, in the market. Now, it is very conceivable that—say, a Phillipsburg resident moves to California, and he happens to be friendly with the Phillipsburg banker, and he maintains a checking account at the Phillipsburg bank, while he resides in California. I think it would be clearly inappropriate to include his California community in the relevant portion of a banking market of Phillipsburg, or together with Phillipsburg as a relative banking market. Or to reverse it, if a California resident becomes a Phillipsburg resident, and banks with a California bank, I don't really believe that you should include the California banks together with the Phillipsburg banks as one market. So I think that is a very extreme position. But basically it demonstrates that I don't believe you should take every account like that into consideration.

Q What is the market test then, in your opinion, Professor Edwards?

A Well, again, I would have to, I think, reiterate what I said, that basically there are two tests. One is the degree—

* * * *

[fol. 653] Q In your opinion, Professor, where is the effect of this merger likely to be felt most?

A Its greatest impact should come on the Phillipsburg residents, or the Phillipsburg and environs community, where my evidence has indicated that the banking market is generally restricted to. Although I believe that its effect could be felt—there is going to be some effect felt possibly in Phillipsburg and Easton, too, if I can rely on the economic and commercial integration of the area as any possible representation of the relevant market. But I think the primary effect will be Phillipsburg.

Q Professor Edwards, have you used standard metropolitan statistical areas in your own research to [fol. 654] represent banking markets?

A Yes, I have.

Q And can you comment on why you had used these markets.

A Yes. First, they represent very convenient units of observation in a statistical study. Data for metropolitan areas is readily available. And more of it is available in metropolitan areas than any more local kind of categories, like cities, for example, more economic information is available by metropolitan areas.

As I say, secondly, it is very convenient to get it.

Third, when you don't have time, as most economic researchers don't, to get into each specific observation in great detail, which they do, you generally take something which is recognized as, without further investigation, the best market for you to use.

Now, for example, I did several banking studies and in those I used metropolitan areas as the appropriate banking market. I did so because of the definition of a standard metropolitan area as being an economically and commercially integrated area, or unified, in some degree, assuming that the banking market would also be somewhat unified, as well. And, of course, it may or may not be. But you have to use something at first.

[fol. 655] Now, there is still a third—or fourth reason why I did it. And that is because when you are dealing with many kinds of economic research which involve a sample of observation, or a large number of sample observations, there are statistical techniques you can employ which allow for the fact that you don't have a perfectly accurate unit of measurement—like the metropolitan area may not be appropriate—the exact area of the banking market. Recognizing this, you can somewhat allow for that in statistical techniques. Now, in my studies I did use such statistical techniques and therefore I felt that the fact that the inaccuracy of my own observation would not have changed my conclusions in any way.

I might add, incidentally, on something like this, any kind of research, whether it be economic, or physics, or chemistry, the researcher has to make a judgment on the comparative costs of doing more refinement on your unit of observation.

In other words, making sure you don't measure at the variable incorrectly, but doing a lot of refinement so you have the exact measurement. You have to weigh those costs against the benefits you think may accrue from more refinement in your techniques.

I made the judgment that futher refinement in the definition of banking market would not be very beneficial to the kind of study I was doing.

[fol. 656] Q Are there any situations where use of the standard metropolitan statistical area may not be appropriate in banking markets?

A Yes, I think there probably are many. And I was very concerned about this when I used the areas myself. So I tried to do some research, further research, on looking at these areas to determine whether or not they were a good banking market. One of the tests.I used was the same test I suggested today, which is the second test, or looking at the distribution of bank customers relative to the interest rates which are being offered.

In looking at the interest rates on savings deposits again in these areas, I found two clear cases of types of metropolitan areas where the metropolitan area was surely not a good indication of the appropriate banking market. One of them was a very large metropolitan area with unit banking, such as the Chicago metropolitan area, where you have 250, 300 banks in a wide area. Clearly I found there that the area was too big to represent the relevant geographic market.

The other case was this strange case of state boundaries that I talked about earlier. I examined observations which I had, which areas were divided by state boundaries, and found in all cases I examined that the state boundaries tended to separate the banking markets, at [fol. 657] least to my satisfaction. So that I would say either in large unit metropolitan areas, or in metropolitan areas which are divided by state boundaries, the use of the standard metropolitan area did not seem appropriate in the data I had.

[fol. 658] Q Can you explain what effects, if any, you believe the merger would have on commercial banking competition in the Phillipsburg area?

A Well, the two defendant banks are quite clearly in competition with each other. Their offices are across the street. The branch offices are in close proximity to each

other. They are offering pretty much the same types of services as the other offers, so I would say it is pretty clear that they are more direct competitors in the Phillipsburg market.

Now, you don't have to do too much manipulation with figures, of course, to find when you have two banks merging in a town of three banks you end up with two banks, and you end up with the resultant bank having a very large share of the market, so I would say that there is no doubt in my mind that there is going to be an important lessening of competition in the area.

Q If the evidence were to show, Professor Edwards, that the defendants did not frequently pull customers away from one another, that there wasn't frequent switching of accounts from one of the defendants to the other defendant, would this alter your conclusion with respect to the fact that the defendants are in competititon with each other?

A No, not at all, for two reasons: No. 1, when the banks are offering the same services at the same price there [fol. 659] is no incentive to change your bank. Why would you expect people to change their bank? So I would say that it doesn't surprise me that there is not much switching between the banks, and, secondly, if you look at the growth of the two banks they have grown pretty much the same, and I can only assume that if they weren't competing for the same business you wouldn't get that similar type of growth pattern. What I am saying is that even though there is not much switching they are obviously competing or vying for new accounts, the new customer in the area, the new dollar. They may not attract the old depositor for the amount of dollar deposits he has, but if he has additional income each month, additional demand deposits, he might switch those, and it seems to me that is also a relevant consideration.

Q Do the New Jersey banking laws in your opinion have any relevance in assessing the effects of this merger in Phillipsburg?

A Very much, very much. Since the New Jersey Branching Law prohibits, say, a Newark bank or even an area much closer to Phillipsburg from branching into the area and becoming what we would call direct competitors, because they have an office right next to the defendant's bank, that

represents some degree of market isolation, as economists like to refer to it, a barrier to entry. In this case the legal barrier to entry is very high. When [fol. 660] you have any kind of market power in a market which is insulated from outside competition, at least from outside competition to the extent they can come right in and become direct competitors and open a branch office directly next to you, I would say that is much more important than when you have a merger in an area where outside competitors can enter very freely. It sets a limit on free entry, very easy entry. It sets a limit on just what extent any bank with market power can exert it. Here there is a limit, of course, but there may not be a very tight limit like you get with absolute easy entry.

Q Professor Edwards, can you explain what effect, if any, you believe the merger would have on the Phillipsburg-Easton area?

A Yes. Here, of course, we are delaing with a greater number of banks. There would be seven in this case as opposed to three in the other area, so I think you have to recognize that the degree of lessening of competition which might take place is going to be less in the Phillipsburg-Easton area than in the Phillipsburg area alone. Instead of the two largest banks you are going to have the third and fifth largest banks merge in this area.

Q Can you explain more fully, Professor Edwards, what you mean by the third and fifth largest banks?

A Well, if you include the Nazareth branch office in [fol. 661] the Phillipsburg-Easton area—in the Easton area, if you rank the banks by size of their total loans and total deposits you will find that the two defendant banks are the third and fifth largest banks in this area. So that is really what I meant.

As I was saying—I also say instead of having two banks remaining in the market in the Phillipsburg-Easton area you are going to have six instead of seven remaining, so you are going to have a greater number of banks. Now, if you were to apply the usual measure of market structure concentration ratios and things like that you would find that the concentration ratio, of course, went up, but not by a large percentage in terms of absolute percentages. In fact, I think the calculation I did was on the three largest banks, I believe.

MR. WEINBAUM: May I hand the witness an exhibit in evidence, your Honor?

Q Government Exhibit No. 22, Professor Edwards, what does that exhibit show, turning to the second page with respect to the increase in concentration which would result if we just took into account the Phillipsburg area and the three banks there?

A In terms of the dollar amount of total deposits as of December 30th, 1967, the resulting bank would have twenty-three percent—did you just ask for Phillipsburg?

[fol. 662] Q Phillipsburg alone.

A Phillipsburg alone. Okay. In terms of just the Phillipsburg area the resulting bank is going to have approximately 76.1 percent total deposits in the Phillipsburg and environs area, so there will be a substantial increase in concentration using that figure.

Q Professor, we are looking at Page 2 of this exhibit.

THE COURT: Identify it by number.

MR. WEINBAUM: Government Exhibit 26.

Q The first page of the exhibit differs from the second page in that the first page sets out total deposit figures for the Nazareth National Bank and the second page sets out branch figures. Do you have an opinion as to which figures for the Nazareth National Bank would—or more appropriately would indicate the market share of the bank in this area of the Nazareth bank?

A Yes, I do. I think that both tables are somewhat incorrect. I think the best table is to use only the Forks branch of the Nazareth bank. Now, why I say that is—well, I can give you an extreme example of that. Suppose you were interested in assessing the banking—you want to find out just what is the banking business in, say, San Diego, California, something like that. Now, the Bank of America has a branch in San Diego. If you were [fol. 663] to include all the deposits of the Bank of America gathered from all over California you would come out with a figure which was in excess of the San Diego banking market. There is no question about that. California has presented economic researchers with this problem for some time, and it wasn't until recent years that we have been able to get a County breakdown by branch office such that the regulatory authorities can publish things like concentration ratios using only the branch office, which they now do. I think they are doing the best thing because it

would be a gross overstatement of total banking business in the area to include the entire branch bank operation.

* * * *

[fol. 666] Q Professor Edwards, you indicated yesterday that the New Jersey Branching Law had certain relevance in assessing the effects of this merger on competition. Are there any factors with respect to new bank chartering which are also important in considering the competitive effects of this merger?

A Yes. The reason the New Jersey Branching Laws are relevant is the aspect of whether or not new competitors can enter the area easily to compete with the remaining Phillipsburg banks. One way of entering is to branch. Another way is through the formation of new banks which could be gained either from State or Federal regulatory authorities.

* * * *

[fol. 670] MR. WEINBAUM: Your Honor, may I add one point here? The defendants have represented, in connection with this case, that ease of entry is no problem in banking. This is what they have said.

MR. MEYNER: Will you please point out in the record where it was said?

MR. WEINBAUM: I am not saying that it was said in the record. It was said in your pretrial brief to the Court.

MR. MEYNER: Where?

THE COURT: I don't recall it. I must have overlooked that.

MR. MEYNER: Probably said you could.

THE WITNESS: Your Honor, may I make another comment?

THE COURT: Wait just a moment.

I believe, on recollection—and I read this just before the trial started—that there is a reference to entry, but I don't recall anything about ease of entry.

MR. WEINBAUM: May I read?

THE COURT: Go ahead.

MR. WEINBAUM: From page 20 of the defendants' brief.

"Another factor to be considered is the ease of [fol. 671] entry into the market."

THE COURT: I stand corrected.

MR. MEYNER: I stand corrected.

MR. WEINBAUM: May I go on, your Honor?

THE COURT: Yes, go ahead.

MR. WEINBAUM: "This, of course, varies, depending upon the type of financial institution involved. In the case of banks and savings banks, both the Federal and State statutes recognize that smaller towns represent a different banking situation from that found in the large cities. The relative ease of entry into the small towns in the trading area is shown by the correspondingly low capital stock requirements for the organization of a bank in the small towns."

And then there are some statutory citations.

MR. MEYNER: All I am doing is pointing out what the statute says.

MR. WEINBAUM: And then in concluding the paragraph, your Honor, of the brief, it reads:

"All of these factors indicate that the elimination of one institution as a separate entity will not lead to a substantial lessening of competition in the market. Since these are numerous potential entrants into the financial market"—maybe that means "since [fol. 672] there are numerous potential entrants into the financial market there is less need for concern with stifling internal growth."

And then there are two cases cited.

So this question of entry was raised, and ease of entry, your Honor, and we were just wanting to point out that there are factors which militate against anyone wanting a bank charter just getting one as a matter of course.

THE COURT: But the ease of entry is governed by statute and such regulations as implement the statute.

MR. WEINBAUM: We think, your Honor, this man's experience is relevant in this connection.

THE COURT: Well, are you urging that in the sense that he is going to tell us what is actually done as distinguished from the guidelines set up by the statute and regulation?

MR. WEINBAUM: Perhaps on that point the witness can respond and we will take it from there, depending upon his answer, your Honor.

THE COURT: No, I—

MR. WEINBAUM: I mean without going into the factors

THE COURT: Well, here again, counsel, I suppose [fol. 673] our colloquy here is burdening the record to a greater extent than his answer. I have indicated to you how I feel about this at the present time. If he can give us a short, concise answer, I will let him answer it. But whether I will give any consideration to it, in reaching an opinion, I don't know. My present feeling is that I won't.

MR. MEYNER: May the record note the objection, because I think we have had too much casual empiricism.

THE COURT: Yes. Go ahead.

A I cannot evaluate the competitive impact of the merger if I am not permitted to evaluate the competition which could be derived from new entry. So that if I am prevented from evaluating this—I must evaluate it, there is no question about. Whether I say it in court or not is irrelevant, to my point of view. As an economist, I must evaluate the competition which is a potential threat from new entry. So I am going to say something about it when we talk about what is the degree of lessening of competition in the relevant banking markets. Whether you would like to have me spell out why I came to my conclusion is up to you.

* * * *

[fol. 675] A (Continuing) First I would like to make it clear that I am speaking from authority—from experience of two years reading new bank applications in the offices of the Comptroller of the Currency, and recommending approval or rejection of these applications to the Comptroller. He does make his own decision, however.

Now, although there are statutes on this, I don't wish to address myself to these statutes, but I wish to address myself to the more specific measures which were used in the office of the Comptroller of the Currency for the two years I was there.

[fol. 676] MR. MEYNER: Would he denote which Comptroller it was, whether it was this one, the existing one, or the predecessor?

THE WITNESS: Yes. I think the records would clearly show that since I was at the office of the Comptroller of the Currency from 1964 to 1966, it was Mr. Saxon.

MR. MEYNER: May I say, he had a different policy than the present one?

THE WITNESS: Yes, he had a much more liberal policy. And we would expect Mr. Camp to be much more stringent with respect to new bank applications. He has made that policy statement on numerous occasions.

A (Continuing) Now, there are two general areas which the statute does consider. They are convenience and needs of the area and the degree of competition in the area.

Now, the question always is, from an economic point of view, how you measure whether the community is being well served or whether there is a high degree of competition. When I was in the Comptroller's office economists used two measures very extensively. And they were population per bank office in the area under consideration, to measure convenience, as well as growth in the area, to measure convenience and need for a bank.

[fol. 677] And to measure profitability the most commonly used measure was profitability of the existing banks in the area. If the banks were making excessive profits, it was considered that there must not be adequate competition, and a new bank might be chartered. Or if the population per bank office was above the national average, for example, the recommendations were often that this community wasn't being as well served in terms of convenience as were other communities and therefore a new bank should be chartered.

Applying these two measures to the Phillipsburg or the Phillipsburg-Easton area, I can briefly say that neither area, either now—at the present time would qualify under these measures for a new bank charter at this time. I certainly wish to concede, however, that, although I worked in a liberal regime in Washington, that a more conservative Comptroller might change the standard completely and swing to much greater liberality. I don't know.

[fol. 678] THE WITNESS: I used the population figures from Phillipsburg and environs, which are made up of the five communities we talked about yesterday, for one measure, and that comes out to be about 4,000 per bank office in that area; and I used Easton and environs, together with the Phillipsburg and environs population, again the same areas that plaintiff has based its case upon, and I found that there

were 16 offices in that area, banks, and that came to 5,000 per bank office.

Now, these figures are very much in line with what is usual in the country as a whole.

For profitability figures I looked at the profits on the banks in Phillipsburg and did not find those higher than the national average. Either factor, I would say, if I were the Comptroller of the Currency, which I am not, I would recommend rejection of a new bank application in this area based upon the factors.

Q Professor Edwards–

A Can I just say one other word?

Q Yes.

A Looking at the historical statistics, no matter who the Comptroller of the Currency is, and no matter who the [fol. 679] state regulatory authority is, you simply can't deny there is only about one new bank chartered for every fifty or sixty in the country each year. Or you can't deny that there is a very high rejection rate for the applications which are submitted and you can't deny that a high rejection rate probably has deterred other people from submitting applications. The statistics, I think, speak for themselves, no matter who the Comptroller is, they do follow some type of general policy and although it could change radically I would tend to believe that history will be repeated here and there won't be a dramatic change in the probability of a bank being chartered in any particular area.

Q Can you comment on the increase in concentration in Phillipsburg-Easton resulting from the merger?

A Yes. Using only the Nazareth-Forks branch and including seven banks in the Phillipsburg-Easton area, my calculations would indicate that the two largest banks now have 56 per cent of this market and would, after the merger, have 65 per cent of the market.

Q Do you have an opinion as to what effect, if any, such an increase in concentration will have on commercial banking competition in Phillipsburg-Easton?

A Yes. Not based upon concentration alone, but based upon the usual measures of market structure, like concentration, like number of firms in the market, like the [fol. 680] ease of entry, taking into consideration ease of

entry with respect to these proxy measures for decrease of competition, taking into consideration all of them and still using a great degree of judgment, I would say that the lessening of competition in the area would be important, or if you would like to use the word substantial, substantial lessening, you can use it. It is not an economic word, it has no specific meaning in economics, but I feel that putting all these factors together, the lessening of competition is a very important thing even in the Phillipsburg-Easton area.

Q Professor Edwards, is it meaningful to look at concentration ratios or other similar rules of thumb in cases like this one?

A Well, I want to be very clear that no measure of market structure or competition or monopoly is perfect. It would be absurd to think that there were such a measure. But at the same time, being given the task of evaluating the impact of a merger, you must use what is available. Now I think it is meaningful to look at many measures of market structure and to see what general conclusions you can draw from several.

As I have emphasized, theoretically speaking economists are quite in agreement that if you have many, many firms in a market so that no firm has any kind of [fol. 681] important impact on the market, you're likely to have what we call competition, or you are likely to have the consumers in the area being well served. On the other hand, we also agree that if you only have one firm in the market you have got monopoly and the consumers are likely to not fare very well. Obviously there are many degrees in between these two areas and theory doesn't help us in saying that if you go from seven to six firms you decrease or increase the amount of competition. There is just no possible way we can prove that point. Thus we are forced to empiricism, which means we have to attempt to measure that when you do go from seven to six, or from six to five or four to three, what is the impact on the competition in the area?

I have done some studies in this area, but I don't place, again, a great deal of emphasis on my own studies. Many economists have done studies correlating measures of concentration with various measures of competition such as pricing, for example in all sorts of industries, and it is unquestionably true that the unanimous findings in this area

are that concentration measures are on an average associated with those, with that kind of competitive behavior we would associate with higher or lower levels of concentration. For example, maybe an example would be good here.

[fol. 682] It is generally found that as the level of concentration increases the price of product charged the consumers becomes higher, everything else equal.

* * * *

THE COURT: What market did you study?

THE WITNESS: I studied in two markets, I studied mainly metropolitan areas, in one specifically 49 markets–

THE COURT: I am thinking in terms of localities.

THE WITNESS: Well, I did not study localities smaller–

THE COURT: I don't mean it in that sense, but when you say you studied metropolitan areas it doesn't mean anything to me because I don't know what metopolitan areas you mean.

THE WITNESS: Well, would you like me to list them for you? I can.

THE COURT: Go ahead, I just wanted to see what you base it on.

[fol. 683] THE WITNESS: Baltimore, Maryland; Charlotte, North Carolina.

* * * *

Chicago, Illinois, population 6,220,000 in [fol. 684] 1960. Dallas, Texas, population 1,083,000. These are all population figures for 1960.

Denver, Colorado, 929,000–

Duluth, Superior, Minnesota, Wisconsin 267,000. Fort Worth, Texas, 573,000. Houston, Texas, 1,243,000. Jacksonville, Florida, 455,000. Kansas City, Missouri,–Kansas, 1,039,000. Miami, Florida, 935,000. Minneapolis, St. Paul, Minnesota, 1,482,000. Oklahoma City, Oklahoma, 511,000. Orlando, Florida, 318,000. Peoria, Illinois, 288,000. St. Louis, Missouri, Illinois, 2,060,000. San Antonio, Texas, 687,000. Tampa, Florida, St. Petersburg, 772,000. Tulsa, Oklahoma,

418,000. Waco, Texas, 150,000. Wichita, Kansas, 343,000. Allentown-Bethlehem-Easton, 492,000.

* * * *

[fol. 685] Boston, Massachusetts, 2,589,000. Cincinnati, Ohio-Kentucky, 1,071,000. Dayton, Ohio, 694,000. Detroit, Michigan, 3,672,000. Erie, Pennsylvania, 250,000. Harrisburg, Pennsylvania, 345,000. Phillipsburg, Pennsylvania-New Jersey—excuse me—Philadelphia-Pennsylvania-New Jersey, 4,342,000. Pittsburgh, Pennsylvania, 2,405,000. Scranton, Pennsylvania, 234,000. Syracuse, New York, 563,000.

Now I am reading State-wide branching, Metropolitan area. Baltimore, Maryland, 1,727,000. [fol. 686] Hartford, Connecticut, 525,000. Portland, Oregon, 821,000. Providence, Rhode Island, 816,000. San Francisco, California, 2,783,000. Seattle, Washington, 1,107,000. That is all in the study. If you like, I can search through and see whether I can find the population figures for my earlier study, as well.

THE COURT: As you were reading off those figures designating the Metropolitan areas I didn't hear any reference to an area with a population as determined by the 1960 census comparable to Phillipsburg and environs or Phillpsburg-Easton and environs, is that correct?

* * * *

THE WITNESS: I think probably so. Some of [fol. 687] my smaller Metropolitan areas would have—for instance like Peoria, Illinois, would really be comparable to the Phillipsburg-Easton area in number of banks and type of community.

THE COURT: What is the population?

THE WITNESS: 288,000, or Waco, Texas, which has 150,000. They are bigger, but the number of banks that you are talking about—maybe two more banks—something like that. I don't think the communities are too dissimilar, but I don't want to really press this because other economists have researched areas similar to this.

THE COURT: Go ahead with your next question.

BY MR. WEINBAUM:

Q What does your research find, your studies indicate, Professor Edwards, with respect to increases in concentration and the various rates existing in a market?

THE COURT: The answer to that is not going to be very helpful because of the generality.

MR. WEINBAUM: Of the question?

THE COURT: Yes.

Q What have your studies found, Professor Edwards, with respect to savings department rates, for instance, when banking markets are concentrated?

A Well, generally I have found a significant statistical [fol. 688] relationship between the level of concentration and the rate paid on savings deposits, the effective rate paid on savings deposits, by commercial banks in the area under observation, an inverse relationship, a significant inverse relationship.

Now, I would rather say all my studies have done is simply found what dozens of other economists have found to be true also, that there is a relationship between concentration figures, measures, ratios and prices in the market under consideration.

Q Does this relate to loan rates to small business borrowers?

A I found that, as well, there the relationship, of course–the higher the concentration the higher the loan rate to small business was.

Q Does this also relate to loan-to-deposit ratios of banks in these markets?

A Yes. I found evidence of that, too, but I don't consider that as important.

* * * *

CROSS-EXAMINATION

BY MR. MEYNER:

Q Now, in this study that you made of concentration in areas selected, isn't it true that the Allentown-Bethlehem-Easton, Pennsylvania, New Jersey, showed the least concentration [fol. 689] rate?

A No.
Q Well, the concentration rate you gave was 28.9?
A Yes.
Q And the highest was 79.7?
A No. That is incorrect, I think.
Q What was the highest?
A I think it is probably 88.9.
Q 88.9, and what was lower than the Allentown-Bethlehem-Easton, Pennsylvania-New Jersey, concentration rate as computed by you?
A These were not computed by me, incidentally.
Q Well, you accepted them as authentic, did you not?
A Yes, sir.
Q And what was lower than Allentown-Bethlehem-Easton, Pennsylvania-New Jersey?
A The only one I found is Tulsa, Oklahoma.
Q What was that?
A Twenty-five percent.
Q All of the rest of what you read showed, except for Tulsa, all the rest are much higher?
A That is correct.
Q And when you made this study of all of these areas you also developed a population per office, did you not?
[fol. 690] A I believe I did. I can't recall whether I did it in both studies or not.
Q How about Table 10 of your study?
A Which study? Oh, that one?
Table 10, can you tell us what page it is on?
Q I believe it is in the Addenda, Page 111.
A Yes. I have tables there. Oh, here–
Q You have population per office?
A Yes.
Q And would you say a population per office on the comparison with all the other areas of 8,249 is low?
A 8,249? I am sorry. I am not sure what comparison you are making.
Q You are talking about population per office in the Metropolitan areas, are you not, in the third column?
A Yes.
Q And 8,249 per office is low when you compare it with all of the other figures?
A That is correct.

Q And now you feel that there will be lessening of competition when you have a market with one to four thousand in this particular area of study?

A I am sorry. I don't follow the question.

Q You said that Phillipsburg and environs would [fol. 691] be 4,000 per office?

A That is right. I think I said that. Yes.

Q And if you had Easton and environs it would be 5,000 per office?

A Yes.

Q Would you say that that demonstrates a heavy concentration of banking in the area?

A Well, I don't think population per office is a means of measuring concentration.

Q Why did you use it in this study you made?

A I used it really as a proxy variable for convenience more than anything.

Q How old are you?

A Thirty-one.

Q You said you made a survey of the Phillipsburg-Easton area. What day did you go to Phillipsburg and Easton?

A I don't recall. It must have been in May—May 23rd. I think counsel can tell you perhaps more when that was.

Q That is not important.

A Well, I think the important thing is that I have been in the area and am familiar with it, not the particular day or days I was there.

Q Would it be more important if you were there on one day that had more shopping than another day?

A That is conceivable.

[fol. 692] Q But it is not important to you?

A Well—

Q Was it in the middle of the week or the end of the week?

A It was in the middle of the week.

Q What time did you go there?

A I was in the area from 10:00 o'clock in the morning to 5:00 that night.

Q And where did you go from 10:00 to 5:00?

A Well, I spent the first approximately hour and a half in the downtown Phillipsburg area.

Q Where?

A Mostly near the banks on Main Street and walking through that area, as well as riding through the area.

[fol. 693] Q Do you realize that you can walk through that downtown area in fifteen minutes?

A Yes. I mean if you are going– .

Q That you can ride back and forth fifteen times in an hour and a half?

A Well, if you are going some place–if you have a specific objective to get from point A to point B, I am sure you can do it in fifteen minutes. I didn't. My objective was to see how much time I could spend in the area and learn something.

Q Well, what did you learn in the downtown area?

A Well, I learned the locations of the banks.

Q Did you go into the banks?

A No, I did not.

Q Have you ever talked to either of the officers of the banks?

A No, I think I said I did not, earlier.

Q You said in your direct testimony that you examined the banks.

A Well, I looked at them. I mean I didn't examine them as a bank examiner examines them.

Q Have you ever examined the call reports?

A Oh, many times–These particular banks?

Q Yes.

A I haven't looked at the call report as such. I have [fol. 694] looked at a lot of information taken from the call reports.

Q But largely the information was furnished to you by counsel.

A Yes. Or what I requested.

Q Now you are in Phillipsburg. And you are walking up and down–South Main Street, was it?

A Yes, in the area. I don't–

Q Did you walk or drive?

A Both.

Q Well, how far did you walk?

A I don't know. I didn't have a–

Q Did you visit with anybody?

A No.

Q Did you talk to anybody?

A No.
Q Did you go into a barber shop?
A No.
Q Did you go into a grocery store?
A No.
Q Now we have got you—an hour and a half in Downtown Phillipsburg. Was there a railroad station there?
A I don't remember.
Q Was there a supermarket there?
A I don't recall one in the downtown area near the bank. [fol. 695] Q Were there any churches there?
A I don't know.
Q Were there any high-rise apartments there?
A It didn't look like that type of area. I didn't see any.
Q No four or five-story buildings there?
A Well, there were a few four or five-story buildings, but coming from New York I don't consider that a high-rise building.
Q Well, would you say there were some modern structures four or five stories high?
A No, my general impression of the area was that it was in pretty poor condition.
Q Would it surprise you that there was some housing built in the last eight years of four and five stories?
A I don't see why it would surprise me.
Q You didn't see it.
A I don't recall whether I distinguished structures by the date of their construction or not.
Q An hour and a half down South Main Street. We started at ten o'clock. Now, where did you go next?
A We drove to Easton, which was the Downtown Easton.
Q What time did you get there, approximately?
A I remember it was around noon, because it was very [fol. 696] congested. And I was impressed by the degree of congestion in the general area.
Q Well, where did you park?
A Well, I did not walk in the downtown area of Easton. We drove around blocks and I asked counsel to point out the banks to me, which he did. I observed that it was a generally commercial area. There were some stores in the central area of the town, the square.
Q Was there a Woolworth's store there?

A I don't recall.

Q Was there a Laubach store there?

A I wouldn't recall the name of any specific store.

Q Do you recall how close the banks in Easton are together?

A Yes, they were very close together in the downtown area there.

Q How many blocks?

A Which two banks? I really couldn't answer that question. I have the feeling that there were several banks within a couple blocks of each other, say, three blocks.

Q Did you talk to anybody in Easton?

A No.

Q And how long did you spend in Easton driving around?

A I don't recall exactly. It think it might have been a [fol. 697] half-hour, because it was heavy traffic, and all we did was drive around the center of town.

Q And then where did you go?

A We drove up to Route 22 out of Easton. And counsel pointed out some plants, like, I think, the Dixie plant was one in the area. And we drove west on 22 to Bethlehem. And I observed how long it took, and what was along the highway, that I could see from the car, and how difficult the traffic was, and how quickly I could go from the center of Easton, let's say, to the center of Bethlehem, or from a bank in Easton to a bank in Bethlehem.

Q And how quickly could you go?

A Well, that day, from the center of Bethlehem to the center of Easton to the center of Bethlehem I think it probably took us at least fifteen minutes.

Q It took you fifteen minutes from the center of Easton to the center of Bethlehem?

A Yes.

Q And what did you do in Bethlehem?

A Again we drove around. I saw the banks, and went down, and I looked at Bethlehem Steel. I think we got out of the car there and stretched a little.

Q What time was it then?

A Well, I can't recall. What I do recall is that after that we got in the car, drove back along Route 22, across [fol. 698] the bridge again, and had lunch at Howard Johnson's up

on Memorial Highway. And it was a late lunch, so it may have been around one-thirty at that time.

Q You didn't attempt to come back a different and more populated way than U.S. 22?

A I don't think we did. I think we came back on Route 22.

Q You lived in Lansford?

A That is correct.

Q Did you ever travel from Lansford to New York by way of Route 22?

A Many times.

Q Do you recall that there are alternate routes from Bethlehem to Allentown to Easton?

A Oh, certainly. I wouldn't have known that by driving to New York. But I knew it because I used to shop in the area.

Q You used to shop where?

A Mainly Hess'.

Q Where?

A Mainly Hess Brothers.

Q Hess' in Allentown?

A Yes.

Q And how far was that from Lansford?

A About 45 miles.

[fol. 699] Q You did your shopping 45 miles away?

A Oh, certainly. I might add that I never did any banking business in Allentown.

Q Well, I gathered you found a satisfactory place in Lansford.

A Yes.

Q Did you bank in Lansford?

A Yes.

Q Now, you left the Bethlehem Steel plant, got back on 22, and had lunch at Howard Johnson's on Route 22, outside of Phillipsburg.

A That is correct.

Q And how long did you lunch?

A I imagine about a half-hour, three-quarters of an hour.

Q Did you talk to any people at all in Bethlehem when you were there, other than counsel?

A Only the waitress, very briefly. And I didn't talk about banking.

Q Did you ask her where she lived?

A No, just asked her what she had on the menu.

Q And then you finished lunch, outside of Phillipsburg. Then where did you go?

A I also want to say that at that point, on the way to Howard Johnson's, counsel pointed out Phillipsburg Trust to [fol. 700] me along the highway.

Q Is that in a newer section?

A Yes, it looked newer.

Q Was this section where the Phillipsburg Trust was different from the South Main Street section where you spent an hour, an hour and a half, walking around?

A Yes, I think it was. I mean we did—I looked at that area many times, because I have driven through on that route, and it is clearly—it looked to me like a growing area.

Q A growing shopping area.

A Like perhaps Phillipsburg was partially moving out there, to some degree.

Q And you drove along, and what else did you see on the way to Howard Johnson's?

A Well, I can't recall whether it was before or after, but I think it was after when we went over to the Ingersoll-Rand plant and Hillcrest Shopping Center.

Q On the way to Howard Johnson's you didn't go by Ingersoll-Rand?

A I don't remember whether Howard Johnson is on this side of the intersection or on that side of the intersection. I mean it is on a bend. I think it is probably a little further out.

Q All I am asking you is to tell me about this [fol. 701] wonderful investigation you said in direct testimony you made of the area.

A I didn't say it was a wonderful investigation.

Q Well, you said it was an investigation, didn't you?

A Yes, but I think I used the words you just used a little while ago, casual empiricism.

Q Casual empiricism.

A Yes.

Q You don't recall whether you saw the Intersoll-Rand plant—

A Yes.

Q —as you went to this Howard Johnson place.

A Well, you see, I might have, if I was looking down the road. But counsel had not pointed it out to me at that time. But when we came back and drove down a hundred yards, or whatever it is, I did at that time, of course, see the Ingersoll-Rand plant.

Q Did you see the Hillcrest Shopping Center?

A Yes.

Q And did you stop there and walk around?

A We pulled in the parking lot, I believe. I didn't walk around.

Q How many supermarkets are there?

A I don't know. What I observed was that there seemed to [fol. 702] be a great variety of stores there, like, I mean, big supermarkets which could fill most people's needs, parking–Orr's Department Store, et cetera. So that–

Q Was Orr's Department Store there?

A Yes, I think they have a branch there, don't they?

Q Didn't you say yesterday in your direct testimony that you didn't know whether Orr's was at the Hillcrest Center or not?

A That's true, I didn't know yesterday, but I looked it up last night.

Q Where did you look it up?

A In the telephone directory, in the Easton-Phillipsburg telephone directory.

Q But yesterday you didn't know, now you know.

A Well, when I–

Q Because you looked at the telephone directory.

A Yes.

Q After lunch you are back at the shopping center. What time is it?

A Approximately two o'clock, I think.

Q And where did you go then?

A Well, after looking in that area very briefly we drove through Warren County, which would be–

Q Where did you drive?

A Washington, New Jersey, Hackettstown. And then we [fol. 703] took another route, which I don't recall the name of, because I looked on the map to find it, which was pretty much due south into the Morristown area, and then got back on 22, drove to New York.

Q What time did you leave Hackettstown?

A Well, we weren't hurrying, so that I think probably—probably it was roughly around three-thirty or so.

Q So your investigation was from about ten-thirty in the morning, starting in Phillipsburg, until three-thirty at Hackettstown, that afternoon.

A I would say roughly. I don't remember the exact times. I am giving you rough estimates.

Q While there did you make any effort to find out what kind of telephone service there is in the area?

A No.

Q To find out whether you can call Easton from Phillipsburg without any toll?

A Well, I did look—again I did look at the telephone directory, and since they are listed in the same telephone directory, I assumed you could. But I don't know for a fact.

Q Well, you made no effort to get any information as to the telephone service in Easton-Phillipsburg, or the standard metropolitan statistical area.

A Nothing other than looking at a telephone directory.

[fol. 704] Q It didn't occur to you, preparing for your appearance here today, to check on any telephone service and how it affects the community?

A No.

Q Did you inquire as to what newspapers were published in the area?

A Yes, I did.

Q What newspapers are published?

A Well, there is a weekly Phillipsburg newspaper.

Q Any others in the area?

A I don't remember. Then there is an Easton newspaper, as well. I think the Easton is daily. There is the Allentown Morning Call, which also, of course, I knew had a circulation through the area. And I think there is also—

Q Didn't you get that from looking at the instruments in plaintiff's material?

A Well, I got it from looking at your application to the Comptroller of the Currency.

Q And in determining what the geographical area would be, would it not be a good idea to get the audited circulation figures of the daily newspapers?

A I don't see why.

Q It doesn't make any difference whether a bank advertises in a wider area than you found Phillipsburg to be? [fol. 705] A No, I think it is very reasonable that they advertise in the Allentown Morning Call. And I wouldn't expect that they would consider that to be their relevant market.

Q Did you make any effort to find out what kind of skills were required at the Ingersoll-Rand Company?

A Nothing other than asking counsel that question, or trying to find the answer in your own application.

* * * *

[fol. 707] Q If you saw statistics with respect to two bridges, one a toll bridge and one a free bridge, the toll bridge being designated on a Federal highway, and the free bridge not being designated on a Federal highway, wouldn't you conclude that the free bridge was more likely to be used by local traffic?

A I don't wish to appear difficult in this because I have to answer this question no. Although generally I think I would like to answer your question yes. That question, no, because there is a cost of time and if I were a Phillipsburg resident I would rather pay the ten cents and get across the fast bridge than drive through the congestion of the downtown Phillipsburg-Easton area. So I would say no to your question. But I do think probably most of the people using the free bridge are local residents, yes, I think that is probably true.

Q Well, did you make inquiry as to whether the local residents could get a cheaper ride than the through people on the toll bridge?

[fol. 708] A Well, once again I didn't, I mean I don't know where I learned that, but it is in the back of my mind that you can get it for two and a half cents a ride by getting a book.

Q Precisely, forty rides for a dollar.

A I think I might have gotten it out of previous testimony.

Q Or you may have gotten it out of your travel?

A It could be.

Q And you place no significance on the fact that there were 19,830 daily movements on the Northampton Street Bridge?

A Well, I said I think it is important and I would go toward the evidence that there is some social and economic integration between Easton and Phillipsburg.

Q And there are 22,439 daily movements across the toll bridge. You would only give that some consideration?

A I would give it some consideration, but I have crossed that bridge many times and I don't think the mere fact of my crossing that bridge indicates integration between Phillipsburg and Easton.

Q Well, when you were at the Hillcrest shopping center did you make any effort to discover what the license plates were on the cars?

A Yes. There were some Pennsylvania license plates there. [fol. 709] Q But you made no effort to try to develop the proportion or the number?

A No, sir.

Q Did it occur to you that you might have stopped at the employment offices in Easton, Allentown, Bethlehem and Phillipsburg?

A Well, I didn't think—it occurred to me, but I didn't think they would have any more information of the type I needed, like the 1960 census data survey.

Q You mean you were satisfied with that but you said you were looking for data?

A No, I wasn't satisfied with it and I continually asked counsel time and time again to try and find me data with more specific breakdowns.

Q But you did not go to employment agencies in Bethlehem, Easton, Allentown and Phillipsburg?

A No. May I just simply add that I was only in the area one day.

Q Well, you said you travelled in the area and you looked at things. Did you endeavor to find out where the insurance company offices were?

A Well, what I did, was again I looked in the telephone directory and looked at what insurance companies and finance companies advertised in the areas. Their location being in

Easton, I wouldn't have known what street they were on, [fol. 710] where they were and such things.

* * * *

[fol. 712] Q Would you say that this is a good definition of standard Metropolitan statistical area: The definition of an individual standard Metropolitan statistical area involves two considerations. First, a city or cities of specified population to constitute the central city and to identify the County in which it is located as the central County and, second, economic and social relationships with contiguous Counties which are Metropolitan in character so that the periphery of the specific Metropolitan area may be determined. Standard Metropolitan statistical areas may cross State lines.

Would you agree with that definition?

A It sounds like a census definition. I think I would agree.

[fol. 713] Q Do you know how these areas are determined?

A No.

Q If you are going to use statistical information don't you think you ought to know how they acquire the information or how they set the Metropolitan areas up?

A Are you now referring to why I use them in my studies?

Q No, I am asking you about standard Metropolitan statistical areas. Do you know how they are set up?

A Well, basically I have read that report, if that is what you mean. I mean, I know that they look at labor movements within the Metropolitan area.

[fol. 714] Q Well these standards are set up, are they not, by the Bureau of the Budget conferring with all of the Federal agencies?

A Yes.

Q And they set up a standard and communities fit into them or they don't.

A Yes.

Q Did you know that the criteria for population relate to a city or cities of specified size according to the 1960 Census of Population?

A Yes.

Q That each standard metropolitan statistical area must include at least one city with 50,000 inhabitants or more or two cities having contiguous boundaries and constituting for general economic and social purposes a single community with a combined population of at least 50,000, the smaller of which must have a population of at least 15,000.

A Is that a question?

Q Yes. Do you understand that as a standard?

A Well, I am not sure whether it is 15,000. I assume that is correct. I would have to read it to make sure.

Q After setting up the criteria, the Bureau of the United States Census of Population says only where data for Criteria 6A and 6B—that refers to workers—are not [fol. 715] conclusive are other related type of information used as necessary.

Do you have that volume there?

A In my office. I don't have it here.

Q They say when information is not conclusive, they reach out and get information including such items as "As average telephone calls per subscriber from county to the county containing central cities of the area; percentage of population of county located in central city, telephone exchange area; newspaper circulation reports prepared by Audit Bureau of Circulation; analysis of charge accounts in retail stores of central cities to determine the extent of their use by residents of the contiguous county; delivery service practices of retail stores in central cities; official traffic counts; the extent of public transportation facilities in operation between central cities and communities in the contiguous county, and the extent to which local planning groups and other civic organizations operate jointly."

When you said there was no data available, did you make any effort to get data similar to this?

A Well, when I said there was no data available, what I meant was no data available that I could get very easily, and I did ask counsel for data along these lines.

THE COURT: We will take a short recess.

(Recess.)

[fol. 716] Q Mr. Edwards, in your direct testimony you said that higher concentration of commercial banks did indicate that there might be, or could be, or is responsible for higher loan rates?

A I think I said something to that effect, yes.

Q There is some disagreement among economists on that score, is there not?

A Certainly.

Q And your study was a rather exhaustive one of standard metropolitan statistical areas.

A Well, I would drop the word "exhaustive" but it was a study of standard metropolitan areas.

Q Well, it was about 39, wasn't it?

A Yes. Not exhaustive.

Q And at least for that purpose you used standard metropolitan statistical areas.

A Yes.

* * * *

[fol. 719] Q Especially in a rapid-growing section.

A Well, are you speaking with respect to Phillipsburg as a rapidly-growing community?

Q The Phillipsburg area, Warren County.

A I wasn't aware it was as rapidly growing as all that. There are many areas in the United States growing much faster than Phillipsburg.

Q Did you make any effort to get projections from the Department of Conservation & Economic Development in New Jersey?

A No, I worked with what actually existed from '60 to '68, not with projections in the future.

Q Well, there was a high growth rate from '50 to '60.

A There was a high growth rate, but there are many areas in the United States where the growth is much more rapid than in Phillipsburg. "High" by what standard?

Q What would you say the growth rate was in '60 to '68?

A Well, I have it here some place. If you will give me a couple minutes, we can dig it out. (Examining papers.)

Q I am referring to the Warren County growth rate.

A Yes.

* * * *

[fol. 723] A Well, my general conclusion was that I didn't think we should—the definition of the market area should

turn on the minority of customers, but it should turn on the majority of customers.

[fol. 724] Q Well, couldn't the minority of the customers be the more recent customers accustoming themselves to more mobile movement?

A I have no information on that.

Q It could, could it not?

A It could be either way.

* * * *

[fol. 725] Q Where the loans are 22.3 percent outside of even your generous area of Easton-Phillipsburg.

A That is correct.

Q Shouldn't that be a factor that would support the proposition that it is a larger market area than you suggest?

A I think I have to at this point say one word about the test I use. All the facts pointed out I consider, but the test I am using, which is the one I believe appropriate for assessing a competitive impact of a merger, is to delineate a geographical area within which the majority of the Phillipsburg residents do business. That is what I set out to do. Now, this is some evidence, not conclusive, that the majority of the Phillipsburg banks get the majority [fol. 726] of their business from Phillipsburg. It is not quite the same point. But it does indicate that if a lot of outside banks are not deriving a lot of business from Phillipsburg these statistics become much more meaningful. So putting these statistics together with my understanding and evidence that not many banks outside this area are deriving a great deal of business from within the area, they become more meaningful for delineating geographic markets being the Phillipsburg-Easton and environs.

Just one more word. I can't draw a magic line around what amount of business these banks should derive inside or outside the market. I mean I don't—I can't make my conclusion here on the fact that this is twenty-two percent and not twenty-one or twenty-three. I am afraid that economics doesn't allow me to do that.

Q Well, one-fifth of the loans are outside the area that you designate?

A That is correct.

Q And that demonstrates a potential area larger than you have demonstrated, larger than you took?

A Well, it demonstrates the banks do business in a larger area than I took, that is true.

* * * *

[fol. 729] A It's about the same. You see there is a different amount. The numerator and denominator both change here, but if you take total deposits–

The way I got this, your Honor, is a little bit complicated. I took the three banks in Phillipsburg. I took their total deposits and said to myself now that is not the business they do in Phillipsburg. They only do a fraction of that, so I took 80 per cent of that and I said now that is at least the minimum amount of the Phillipsburg market. It is probably bigger because other banks do derive [fol. 730] some business from Phillipsburg.

Q City banks do.

A City banks.

Q And California savings and loans?

A It is even conceivable that one may have a demand deposit there.

Q But you put all those statistics together as the Phillipsburg market.

A But balancing the figures against that, I took the minimum amount everyone could agree is in the Phillipsburg market, and then I have some Riegelsville deposits originating from Phillipsburg, and if you divide that you get roughly 3 per cent. You do the same thing in Easton and you get 3 per cent, about 3 per cent as well, so this Riegelsville bank is deriving about 3 per cent from the Phillipsburg market, but I thought that was interesting, so I looked at it further, and it turned out that of 3.7 million, 2.6 million, these are in savings bonds, which I would consider is a very, very–out of the normal course of–shall we say out of the majority banking residents needs in the area. For example, most of these bonds, the testimony indicated that most of these bonds were in $10,000 denominations. They were carrying a 5 per cent yield compounded.

Q What testimony is this?

[fol. 731] A Let's see.

Q As I understand it, they offer 5 per cent on $100 or over.

A Yes, but my understanding of Mr. Rhimer's testimony was that most of them were in $10,000 units.

Q He said he wasn't in this area.

A In the Phillipsburg area.

Q Mr. Rhimer—oh yes.

A This is a deposition.

Q Yes.

A By Mr. John Rhimer, who is a branch manager, if I am correct, at Riegelsville.

Q Yes, you are right.

A And he does say he derives this from Phillipsburg and he does say most of the savings bonds are in this 10,000 denomination. You realize a big bank has a decided advantage in competing for this type of banking service because insurance provisions only run to 15,000, so if you were a big depositor you are going to feel better about having your money on deposit at Girard, and in addition they compound more frequently so the rate is higher, and Mr. Rhimer also indicated these were long-term deposits, so I would say here you have a customer who is not the usual Phillipsburg resident, wealthier. He is after long-term very secure investment, and he is willing to do more shopping [fol. 732] because he has a bigger return, expected return by doing that shopping. He is not, to my mind, the normal Phillipsburg customer who will be affected adversely by a merger.

Q This bank seven miles away in Riegelsville, Pennsylvania, has $3.7 million in what you describe as the Easton-Phillipsburg area.

A That is correct.

Q And much more if you take our area.

A Well, we can give it to you exactly.

Q Do you have it figured for our area?

A No, but the other—well, there is no way of separating it out. I'm sorry. I can't do it. I can just tell you where they derive the rest of their business from, which wasn't what you asked.

Q Are you willing to admit that there is a vying by various financial institutions for the dollar the average person desires to save?

A Yes.

Q And would you say that this comes from insurance companies?

A Partially.

Q Did you make any effort to find out how many insurance agents there might be in this area?

A Yes. I looked in the telephone directory.

[fol. 733] Q For insurance agents?

A Well I have it right here. I looked under insurance in the yellow pages and found quite a few. I mean this would be all types of insurance.

Q This would be essentially life insurance that would be seeking the investing dollar, would it not?

A Well you just said–

Q You wouldn't go to a fire or casualty company.

A You said vying for the dollar. I mean they all vie for the dollar.

Q For the investment dollar or the safekeeping dollar?

A Well, I would say insurance companies are not, as a matter of fact, very large in volume for that particular dollar, the investment dollar. Insurance is much–if you look at the growth, insurance companies, you will find that they have been growing very rapidly in straight life, which means risk diversion rather than investment of dollars, and not growing as rapidly, at least nationally not growing as rapidly in equity types of investment like variable annuity bonds.

Q They are not growing in variable annuity bonds?

A I didn't say they weren't growing. I said they weren't growing as rapidly as they are in other areas, and this is one of the problems of the insurance industry right now, so [fol. 734] that I would say although they do sell some, you know, they obviously compete to some degree for the–if you want to call it–

Q You don't consider it a significant degree?

A Well, the word "significant" is difficult for me to pin down, but I will say what I believe is that commercial banking does have some competitive advantage in vying for this savings dollar, and therefore do I think it is significant in terms of should it be considered when you have a merger of a commercial bank? I would say no. Do I think it is significant in terms of profitability of possibly a pension plan? Yes.

Q Would you just try to answer my questions as they are asked and not in relation to mergers at the moment?

There is a vying for the dollar by the insurance agents.

A To some degree.

Q There is by mutual funds.

A Yes.

Q There is by stock market brokers.

A Yes.

Q Security salesmen.

A Certainly.

Q Savings and loans.

[fol. 735] A Yes.

Q Mutual savings banks.

A Yes.

Q Pension funds.

A Yes.

Q Trust departments or trusts.

A You mean trust departments of banks competing for their own customers?

Q No, individual trusts set up with a trustee other than a corporate trustee.

A Yes.

Q There is a vying for—in the business of loaning money to other people, is there not? There are many financial institutions that are trying to loan money.

A Yes. I am trying to sort something out in my mind about your questions. When you say—

Q Well, are many financial institutions interested in loaning people money?

A Yes.

Q Credit card operators are part of this, are they not?

A In extending credit, you mean?

Q Credit cards, yes.

A The banks have credit cards as well as others.

Q Well American Express.

[fol. 736] A Yes.

Q If you take an airplane they say charge it or pay for it in 30 days.

A That is true.

Q If you have a Diner's card and you wait more than 30 days you get an interest charge, don't you?

A That is right.

Q Department stores?

A Yes. They extend credit.

Q Would you say it is correct that Sears Roebuck was quoted as being able to make 18 per cent on the dollar on their retail installment sales program?

A I don't know that to be true. I have to answer no.

Q But the larger department stores have credit departments, don't they?

A Yes.

Q And they get a substantial rate of interest on prolonged accounts.

A Yes.

Q Insurance companies are interested in making loans.

A Yes.

Q As a matter of fact, they have replaced the debenture or bond market in many respects, have they not, by direct placement?

[fol. 737] A They have far from replaced it. They do a lot of direct financing, but they have not replaced the bond market.

Q I stand correct, but they do play a very substantial part in finance.

A Yes.

Q And some insurance companies have small commercial and industrial loan departments.

A Yes.

Q They would be going in this area of 100 to $200,000 that we might be concerned with.

A I tried to get information on that.

Q Where did you try to get the information?

A Well I asked some—I teach a class in different types of financial institutions and they have speakers come in like from John Hancock for example, and they claim they don't do much business in the area of small business financing.

Q You never made inquiry of The Prudential Insurance Company?

A No. I don't know anybody down there.

Q Maybe we should be introduced.

Finance companies. I don't mean the small loan companies, but the finance companies.

A Yes, well, I don't have any personal experience with [fol. 738] finance companies, but they were my major concern with respect to competition for small business, and I did as much reading as I could.

Q Isn't it a fact that instead of going to the banks today the finance companies are selling paper directly to large corporations?

A I have some figures on that exactly.

Q I didn't ask for figures. I asked you a question.

Will you read back the question?

(Question read back.)

A I would say as a general statement there has been some substitution over the last five or six years of direct placement of commercial paper for bank loans, although the amount of bank loans is still rather high.

Q Isn't it a true, as a matter of fact, that they started the direct placement and the banks now in order to get more money went out and encouraged the certificates of deposit so they could compete with this area?

A No. I don't think that is the chief reason for the banks offering certificates of deposit.

Q Would you say that mutual savings banks are interested—are among the financial institutions interested in making loans?

A Yes.

[fol. 739] Q And they play a substantial role in this area.

A Which area?

Q In the area of making loans.

A Mortgage credit, primarily.

Q The credit unions both on the deposit side and loan side?

A They are small, but they do make consumer loans.

Q They are growing, are they not?

A As a percentage of the total savings market, they are getting—they have increased their share very little in the last 20 or 30 years as a matter of fact.

Q But they have increased their numbers?

A They are such a small—I really can't tell you the facts offhand.

Q How about the buildings and loans, both the State and Federally chartered, Federally insured and not insured?

A Yes. They extend mortgage credit.

Q Did you make any effort to evaluate their activity in this geographic area?

Q Yes.

A I asked counsel to provide me figures with how large they are and how many there were. As I recall, there are I think two savings and loan associations in the Easton area [fol. 740] and two building and loan associations in Phillipsburg.

Q But there were a number, were there not, in the area the defendants suggested?

A Yes.

CROSS-EXAMINATION

BY MR. WATERS:

Q Professor Edwards, I believe you testified this morning that in making preparation for your testimony you had to review the potential entrants into market place.

A I had to review the aspect of potential entry.

Q The standards for commercial bank entering.

A A new bank or a merger?

Q That is correct, a new bank.

A I would consider it a relevant aspect, yes, to assess the competitive impact of merger.

Q In preparation for your testimony yesterday, did you read the Pennsylvania statute for establishing a new bank?

A You mean the State statute for chartering a new bank?

Q That is right.

A No.

Q Did you read the New Jersey statute for establishing a new bank?

A No, but I did look at the statistics in New Jersey of how many are chartered.

[fol. 741] Q Excuse me. Did you read the New Jersey statute for establishing a savings institution?

A No.

Q Did you read the Pennsylvania statute for establishing a savings institution?

A No. I didn't think that was relevant.

Q Did you read the New Jersey statute for establishing a mutual savings institution?

A Not relevant.

Q Did you read it?

A No.

Q Did you read the Pennsylvania statute for establishing a mutual savings institution?

A No.

Q Did you read the New Jersey statute for establishing a credit union?

A No.

Q Did you read the Pennsylvania statute for establishing a credit union?

A No.

Q Did you read the Federal statute for establishing a credit union?

A No.

Q Did you read the New Jersey statute for establishing a small loan institution?

[fol. 742] A No.

Q The Pennsylvania statute for such an institution?

A No.

Q Did you read the New Jersey statute for establishing installment sales companies?

A No.

Q Or the Pennsylvania statute?

A No.

* * * *

[fol. 745] Q In your study that appeared in the National Banking Review on concentration, where you discussed this theory of concentration tending to increase lending rates, and also decreasing interest on savings, there also appears Table B-2 in the appendix, which gives performance characteristics of branches in area populations identical with the area population of the Allentown-Bethlehem-Easton-Pennsylvania-New Jersey Metropolitan statistical area, and does [fol. 746] it not show there that for banks in the twenty-five to fifty million dollar bracket, which would be the bracket in which these two banks would be in, after the merger, that there is an increase for these various categories, that the rate on time and savings deposits increases from 2.71 for ten to twenty-five million banks to 2.91 for the twenty-five to fifty million banks?

A Which table is this, please?

Q B-2.
A You are looking at rate on time and savings deposits?
Q What's that?
A You are looking at rate on time and savings deposits?
Q That's correct.
A And you are looking at twenty-five to fifty.
Q Twenty-five to fifty. And it shows that there is an increase in the rate on time and savings deposits when a bank gets into the twenty-five to fifty million category?
A Yes, that's true, but–
Q An increase in business to total loans when a bank gets into the twenty-five to fifty million dollar category?
A But these figures have nothing to do with market structure.

* * * *

[fol. 751] MR. ROACHE: As I understood his testimony, that because the banks were regulated they were in a better position to compete with the savings and loan institutions.
THE COURT: I thought I heard the opposite.
THE WITNESS: That's right.
THE COURT: I will let the witness answer it.
A Just the opposite.
Q Because they were not regulated?
A No, since commercial banks are regulated they were, by that Regulation, prevented from competing fully with savings associations.
Q Are not savings and loan associations regulated?
A As of 1966 they are regulated on the rate they can pay, as well.

[fol. 758] THE COURT:

* * * *

As I understand it, you correct me if I am wrong, if you are a small demand depositor, it doesn't make much difference whether you have a savings account there or not, you will still pay a charge on your demand deposit account depending upon the use; is that correct?

THE WITNESS: But the question, your Honor, is what charge.

[fol. 759] THE COURT: Well, all right, I am going to leave it entirely up to you, give me your best opinion. What are the services that you consider in this case will feel the impact of the anti-competitive effect of the merger?

THE WITNESS: Passbook savings accounts, small business loans, by that I mean certain firms under $250,000 assets, perhaps somewhat larger.

THE COURT: And what do you define as a small business loan?

THE WITNESS: Loans extending to firms with less than $250,000 of assets.

* * * *

[fol. 762] RECROSS EXAMINATION

BY MR. MEYNER:

Q How would it affect passbook savings if you presently have a limit of four percent? How is it going to affect them?

A I think you have to remember what has happened in the past—for example, take in the past few years in this area. We had a limit of four percent, but not all banks were paying four percent, right? Some were paying three percent.

Q But right now it is four percent. Now everybody by government regulation—

A Well, it is five and half percent on large CD's, five percent on small CD's, four and half on some accounts and four on others, and it is possible that the rate ceiling may not permit competition all the time, but the regulatory authorities are in favor of competition and generally change that rate ceiling whenever they can to enhance competition [fol. 763] and only recognize it as an evil when they have to curb competition due to that rate ceiling.

* * * *

[fol. 769] THE COURT: We have here, as I have followed the testimony, the merger of two small banks. The result in size is not substantial. Also size has never been considered as

too significant in anti-trust actions. The effect, however, is what the Court must look to.

* * * *

[fol. 776] JOSEPH G. VARGA, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live, Mr. Varga?

A I reside at 325 Center Street, Phillipsburg, New Jersey.

Q Have you lived there most of your life?

A I lived in Phillipsburg all my life, yes, but not at that residence.

Q Will you state your qualifications with respect to banking?

A At present I am the vice-president of the Phillipsburg National Bank. I have been employed there for seventeen years. I am a graduate of Phillipsburg Catholic High School. I attended Lafayette College. I spent one session at the Stoner Graduate School of Banking, and I have attended AIB, [fol. 777] American Institute of Banking, courses offered by the local Penn-Jersey Chapter of the American Institute of Banking.

Q Will you describe your progress within the bank?

A I started in the bank in 1951 as a commercial paying and receiving teller, and I worked through the ranks, becoming head teller. After five years of working at the bank I was then transferred into the mortgage and loan department and eventually became assistant cashier in 1963. My next promotion came in 1968, when I was promoted to cashier and just recently, in August, I was promoted to vice-president.

Q So you have been in the various phases of activity in the bank with the exception of the trust department?

A The trust department is one of the banking departments that I have not been in and I have never worked as a savings clerk.

Q But you have supervised savings?

A I have supervised the savings department.

Q Will you describe the services offered by the bank?

A The bank's services are checking accounts, savings accounts, loans, including mortgage loans, VA loans–Veterans Administration mortgage loans–FHA mortgage loans, conventional mortgage loans, tuition loans, or higher educational loans, as they are called in this State.

[fol. 778] We also offer–these are the main ones that I have covered–commercial-industrial loans.

Q Does any other bank in the area maintain school savings accounts?

A No, we are the only ones that have a school savings system in the town of Phillipsburg.

Q How do you explain the fact that the loans at Phillipsburg National are rather high in comparison with total assets?

A Well, I think actually we have been trying to serve the community's needs, especially in the mortgage field, and we have placed a lot of our assets into the mortgage field.

THE COURT: I have a question. I don't know what a school savings account is.

THE WITNESS: Your Honor, a school savings system account is where we open accounts for the children between the first grade to the eighth grade. We go around and give them all passbooks and they turn their money in to their teachers and we, once a week, collect their nickels, dimes and quarters and we credit it to their accounts. Once they reach the level of eighth grade, and upon graduating into high school, they are asked to either transfer the account to a regular savings account or close the account [fol. 779] out. This is just a service to teach children thrift, and we find it works very well.

THE COURT: Thank you.

BY MR. MEYNER:

Q What is the bank's experience with reference to Veterans Administration loans as compared with other banks in the area?

A That was before I joined the bank, of course. We went into the Veterans Administration loans immediately after World War II, we were one of the first in the area to loan money to the veterans. We have continued through the course of the years in this practice and at the present time it looks like it is on an increase again due to the returning of veterans from Vietnam.

[fol. 780] Q Do you recall how high you went with Veterans Administration loans?

A Yes. At one time it was well over a million dollars. It's now hovering around nine hundred thousand.

Q How about other banks in the area?

A In the Warren County area no other bank has been taking Veterans Administration loans for the last ten years.

Q How about Federal Home Administration loans?

A The FHA loans, we have been active in FHA loans since the institution of the FHA program. At the present time we have in the neighborhood of 350,000 outstanding balances on our FHA.

Q How about other banks in the area?

A Other banks in the area are not competitive with FHA. They shy away from FHA.

Q Is this because of the mechanical work or the paper work?

MR. WEINBAUM: We object to the form of the question. It is leading.

MR. MEYNER: I withdraw the question.

Q Why?

A I think the prime reason would be the detailed work that has to go into securing and getting a commitment for an FHA mortgage, the paper work involved.

[fol. 781] Q How about commercial and industrial loans, are you active in this area?

A We are active in this area, but of course we are limited to the amount of assets that we would place into a commercial and industrial loan field because of the tie-in with our mortgages and the rate of return on our mortgages is dependent upon how much money we would invest into the C&I loan category.

Q What is your experience with people starting in business who apply to the bank for a loan?

A You're talking in the commercial and industrial loans scale?

Q Yes.

A We have requests for commercial and industrial loans for people that are starting into business. They would run in the neighborhood of 25,000, 75,000 and upwards. Our biggest concern at this time is the fact that some of our customers who have gone into business loans with us are continually growing. They are asking us for larger lines of credit. They also ask us for

larger lines of credit. They also ask us for commercial mortgages, and at the lending limit that we are now these corporations and business houses are outgrowing our bank.

Q It is not always a loan, is it, that they want as much as a line of credit.

MR. WEINBAUM: We object to the form of the [fol. 782] question, your Honor. It is leading.

THE COURT: Overruled. (Question read back.)

A The lines of credit are established for various business houses and in order for them to get better trade credit corporations or people that are doing trading in our area will call the bank and ask what kind of demand deposit balance the corporation has, and then they would ask what kind of line of credit, "Are you giving them a line of credit?" Is their credibility worth so much, and we would say, "Well, we are lending them a certain figure on an open line."

Q How about the practice with respect to contractors bidding on jobs?

A One of the requirements of a contractor bidding on a school program or something like that is to have an established line of credit at a bank, and this enables him to submit his bid.

Q And do the banks, the two banks propose to be merged, are they engaged in giving letters of credit to these people?

A It is not exactly a letter of credit, a line of credit yes, not letters of credit.

Q They give a letter saying "We have established a line of credit"?

[fol. 783] A We give a letter establishing the credibility of that contractor.

Q In other words, you have to be prepared to loan them that much.

A That is right. We are committed for that amount.

Q Do you find that the lending limit imposes any restriction on doing business in this area?

A Yes. At the present time our lending limit can be calculated as 10 per cent of capital and surplus, so we are talking about a $100,000 lending limit. There have been occasions where contractors would ask for a larger line to suit their needs in the event that they needed that money.

Q Is there a demand for a higher–

A There is a demand for a higher lending limit and also higher lines of credit.

Q You know specific people that have requested it and you have been unable to grant it?

MR. WEINBAUM: We object to the question, your Honor. It is leading.

THE COURT: Well, it is something by way of testimony of counsel, but I think the witness has testified on the subject.

Mr. Varga, just tell us what the situation is with respect to demands for line of credit and your [fol. 784] present capacity to meet the demands.

THE WITNESS: Can I make it in an illustration?

THE COURT: Yes, any way you can answer the question.

THE WITNESS: To illustrate, a demand for a line of credit, the Ford Motor Company dealer in our town floor plans his line of new cars with the Ford Motor Credit Corporation. When we went to visit him to ask him if we could be of any assistance to him he said in order to do business locally in the Town of Phillipsburg we would need an established line of $200,000. The $200,000 would be secured by the ownership certificates of the vehicles that he receives, and then when he sells the cars he would reduce the line or increase the line according to his needs in the automobile field.

THE COURT: How frequently are you confronted with similar situations?

THE WITNESS: Well, this is only one dealer. There are many dealers that would request the same thing.

THE COURT: That is what my question was. How frequently are you confronted with similar situations?

THE WITNESS: I would say four or five times a year.

[fol. 785] Q How about the situation with respect to Pearsall?

A In respect to Pearsall Chemical Corporation we originally helped this corporation get started in the town of Phillipsburg with a large commercial loan which we were participating in with an insurance company. Approximately the loan was in the neighborhood of $250,000. Mr. Pearsall came to the bank maybe five years ago and asked if we could make arrangements for half a million dollars, and of course we would have to go out and participate the other shares outside, so we would have to contact banks to participate. We told him we were interested and by the time that we got around to finding out the way to make the arrangements with the other banks we lost the account to another bank in Easton.

Q How about appliance dealers, do you have problems there?

A You find dealers almost similar to automobile dealers. In recent years they have been floor planning a lot of their merchandise. Actually, they have had it on a ninety-day interest-free account and they hope to pay no interest for the ninety days. Now years ago the lines wouldn't be quite as high, but in recent years we are talking about color television, stereo sets and things like that that have a wholesale value of a lot larger dollar amount, [fol. 786] and we are getting into where we normally would lend an appliance dealer 25 to $50,000 on a line of credit, and now we're getting into areas that it is going to be 50,000 to 100,000.

Q Under commercial and industrial loans that you list for a call report or report, do you carry some items that are not strictly commercial loans?

A Yes, we have in the past. This creates a lot of trouble with our accounting system when we do this, but included in some of our commercial and industrial loans are loans made to individuals that may only be a proprietor and may want to buy a new car, and we give him a term loan rate, and we classify the loan in the commercial and industrial.

Q How about loans to municipalities?

A We classify loans to municipalities as a commercial venture.

Q You mean on short-term loans?

A On short-term loans, right, not securities now. A tax bond issue anticipation.

Q Bond anticipation.

A Bond anticipation. We have a few. I think we have three right now with the Township of Lopatcong and the Township of Pothatcong and the County of Warren. Those three loans now total in our bank along well over a half a million [fol. 787] dollars, closer to 700,000.

Q And they are classified under commercial and industrial loans?

A They are classified as that.

Q Do you have other financial institutions seeking the deposit dollar?

A Well, we get competition from the savings and loan associations, building and loan associations, insurance

companies, local credit unions and mutual funds and also from the stock market.

Q Well tell us about the savings and loans.

A One of the largest competitors in savings and loan is Valley Federal Savings & Loan located in Easton, Pennsylvania.

Q What do they pay?

A They are paying 4-1/4 per cent on their savings and the building and loan associations, the local building and loan associations are small but they have been able to get a rate of return between 5 and 6 per cent in recent years.

THE COURT: I don't follow you. You say they have been able to get a return?

THE WITNESS: Yes, sir.

THE COURT: Are you speaking of dividends?

THE WITNESS: Dividends.

THE COURT: Paid out to depositors?

[fol. 788] THE WITNESS: Yes.

MR. MEYNER: If your Honor please, I think these are the type by which you pay for eleven or twelve years and then you get a final sum. You pay five dollars a month I guess it is for twelve years and then you get a thousand dollars. I think it is the old conventional type.

THE COURT: I believe that is the way that buildings and loans started.

MR. MEYNER: Yes.

THE COURT: The reason I asked Mr. Varga the question is it seemed to me, if I heard him correctly, that he was referring to the institution saying they get a return of 5 or 6 per cent. I just wanted to clarify that because I thought that he intended, as he subsequently said, that it was the person investing that got the return.

MR. MEYNER: Yes.

Q The last group you referred to were the conventional building and loans under state charter.

A Yes.

Q And the former Valley Federal is a Federally-chartered institution.

A Yes.

Q Which has had what kind of growth rate?

[fol. 789] A They have been experiencing a tremendous growth rate over the past ten years. I can cite—their assets now are 39 million at the end of 1967. At the end of '66 they were

at 36 million, and I have information—I read the magazines and look at these figures. They moved in the State of Pennsylvania—they moved from 40th to 36th in three years in size.

Q And do you find them in competition with respect to loans?

A Very much so. Their mortgage loans are carried into Warren County and surrounding areas. They have no hesitation in taking mortgages in the county, none whatsoever.

Q You have had situations where—

A I have lost customers to them because I couldn't meet the terms that the savings and loan were able to give.

Q You mentioned building and loans. How about savings banks?

A Well there are no savings banks in Warren County and there is not any in—

Q Do they advertise?

A Well they advertise in such a wide area that the advertising actually comes out of Philadelphia over the television. It is sponsored by quite a few programs on television, and this of course goes into our area, and by [fol. 790] that the people know what rate they can get on their accounts.

Q What television programs do you get in your neighborhood, for instance?

A Well, we get mostly—we get Philadelphia channels 3, 6 and 10. As far as the program advertisement, I don't know whether they just sponsor one program.

Q Do you get New York?

A No. New York is difficult to get from our area.

Q But in some areas in Phillipsburg they have the cable television.

A With cable television hook-up they can get New York and they can get advertising out of New York banks too.

Q We have been talking principally about competition for the savings dollar. Do you have any—did you ever check on what the growth was of savings—of credit unions?

A Yes. Credit unions have been instituted in our area as far back as 20 years ago. One of the first was Nytronics employees' Federally-chartered credit union. I think they would go back about 1947. Their employment figure there would be roughly 400 people, and they had 384 people that belonged to this

credit union. Their assets would be in the neighborhood of a quarter of a million dollars.

Q This is on the deposit side?

[fol. 791] A This is on the deposit side. They would pretty well be lent out—at least 90 per cent so. That would be about 240,000. Then just recently we had the Baker Chemical employees' credit union start about five years ago. We also had the Ingersoll-Rand credit union start a year ago, maybe a little bit over a year ago, and of course there was a large credit union at the Riegel Paper Company at Milford, New Jersey, which has been in existence I think maybe seven to ten years, and their assets are a million dollars at the present time and they are fairly well loaned out.

Q So you suffer competition both on the borrowing side and the lending side?

A Right.

I would like to make a remark, we had a unique situation on the borrowing side. If you borrow money for a consumer type of loan you not only pay the loan payment back, but you also pay a certain percentage that goes back into your savings, thereby building an equity and this enables—the company just charges the man's payroll account and he is putting some in savings and he is paying back his loan at the same time.

Q Similar to compensating balances.

A Similar, yes.

Q How about savings deposits in savings banks or [fol. 792] bonds?

A Well—

Q Certificates of deposit.

A Certificates of deposit, ever since September 1966 when the tight money situation arose the city banks came out with the certificate of deposits to attract funds, and of course we felt the effect of it almost immediately when through advertising—they were advertising 5 per cent rate compounded daily—some of them are compounded daily, some compounded quarterly, semi-annually—they were giving investment bonds, and of course we didn't have anything like that at the time, so just recently we raised our interest rate on passbook savings to 4 per cent and we started to advertise a 5 per cent certificate of deposit under a hundred thousand dollars.

[fol. 793] Q How long has Phillipsburg National and

Second National, to your knowledge, had certificates of deposit?

A Well, I think in order to meet the competition, I think we had certificates of deposit in 1966. But, of course, we didn't advertise that we had certificates of deposit.

Q And what rates were you paying?

A We were paying four percent on certificates of deposit.

Q Did some of your funds flow to the other areas, to your knowledge?

A Yes, it did. This is one reason why we had the four percent certificate of deposit. We thought we could maintain our deposits by offering the people a four percent rate, which was one-half over the present passbook rate, and thereby holding the account. But, of course, when it went to five, it was pretty tough to hold the account.

Q You mentioned mutual funds as an area where peoples' savings are sought; what do you know about that?

A Well, as far as mutual funds go, I know there is activity in the Phillipsburg and Easton area on the part of mutual fund salesmen. Some of my friends are mutual fund salesmen.

Q Have you encountered withdrawals for that purpose?

A I have seen some withdrawals for that purpose, yes.

[fol. 794] Q Will you discuss your experience with respect to consumer loans?

A Well, we provide the consumer loans—we have four types of consumer loans. We have the personal loan, the appliance loan, the automobile loan, and the home improvement loan. We found that in order to get a better rate of return on our investment—I mean on our investment of money in the different loan portfolios that it was feasible to invest in the consumer loan where we could get a six percent "add on" rate; in order to stimulate this type of loaning we hired a specialist in the field to solicit business on a consumer loan basis.

Q How about the area of that business?

A The area of the business would extend as far as we thought it was feasible to take. As far as credit checking, and servicing, and collections, the area went as far as the four-County area.

Q Can you name some places that would identify it rather than the Counties?

A Well, we have taken automobile paper as far as East Stroudsburg, Pennsylvania.

Q This is to the north?

A This is to the north. To the south we have come down as far as Somerville, New Jersey. To the west we have been in Carbon County on the home improvement loans, but I'd say [fol. 795] in the Allentown area—we take loans in that area. And then to the east we take in Hackettstown, maybe even Morris County—some in Morris County.

Q How about the area you serve in commercial and industrial loans?

A The area in commercial and industrial loans would be all of Warren County, Lehigh and Northampton. Of course, most of the commercial and industrial loans are, I would say, confined to around the Phillipsburg area.

Q How about the mortgages?

A Mortgage loans, there again we would go throughout Warren County on mortgage loans. We have no difficulty in servicing them. And into Northampton and Lehigh. We go into the northwest section of Hunterdon County, because that is only about seven miles from where we are. I think that's the extent of our mortgage operations.

Q What financial institutions do you consider active competitors of yours for mortgage loans?

A Well, I would say the Easton National Bank, Lafayette Trust Company, Valley Federal Savings, the Phillipsburg Trust Company, First National Bank in Washington—as a matter of fact, I would include all the banks in Warren County, nine banks.

Q How about Hunterdon?

A In Hunterdon County it would be the Hunterdon County [fol. 796] National Bank, the First National Bank of Milford. Girard Trust Company would come into that, too, for competition on mortgages.

Q How about the installment loans, how about the banking institutions that are interested in the installment loans?

A Can I clarify the question?

Q Yes.

A Would you mean the ones that would be actively going after installment loans?

Q Yes, I would prefer that.

A Because there are banking institutions that aren't actively soliciting–

Q How about the ones that are actively soliciting–

A One of the biggest would be the Easton National Bank & Trust Company. They would be the biggest. And then the First National Bank of Washington has a very good consumer loan department. Lafayette Trust were in the field and they dropped out. The Union Bank & Trust Company of Eastern Pennsylvania, were very active in the consumer loan field, but they have cut back on their lending policies on there.

Q How about Milford?

A Milford, New Jersey, they have a very good loan department, too. I know the head of that department quite well.

[fol. 797] Q And do you find your people in Phillipsburg using those services?

A Yes, they do, because there is a lot of indirect dealer paper coming into our area. Especially across in Easton, Pennsylvania, the Easton National Bank has dealers that they are floor planning on commercial loans. And they are also taking the automobile paper that the dealer has. This is one reason they finance them on a floor plan arrangement, so that they can get the first chance at their retail paper.

Q Will you tell us something about the area, so far as employment is concerned?

A Well, just recently I made a study of the employment figures in our area. We were anticipating extending our branch office further out into the County. I have some figures jotted down here, if I may.

MR. WEINBAUM: Your Honor, before this witness testifies on the study, we would like the laying of the proper foundation.

THE COURT: I think he indicated he was going to refer to some notes that he had to refresh his recollection. Are you objecting to the question?

MR. WEINBAUM: No, I am not.

THE COURT: Well, do you object to his using the notes he made to refresh his recollection?

[fol. 798] MR. WEINBAUM: No, I am not.

THE COURT: Well, what is your objection?

MR. WEINBAUM: That if there is any sort of a study, we would like an opportunity to know the manner in which it was prepared.

THE COURT: Well, you have opportunity to do that. You can cross-examine him on that.

BY MR. MEYNER:

Q Did you, or someone in the course of the bank's business, endeavor to find out where people lived who worked at Ingersoll-Rand?

A Yes, we did.

* * * *

[fol. 799] A There is a plant in West Easton. There are 250 employees in the West Easton–

THE COURT: Can I interrupt you for a moment?

Mr. Weinbaum, has this information been furnished to plaintiff during the course of discovery proceedings?

MR. WEINBAUM: No, it hasn't, your Honor.

THE COURT: Well, did you have information with respect to the relevance of employment at the Ingersoll-Rand plant?

MR. WEINBAUM: Did we have any information on the subject?

THE COURT: That defendants would refer to employment at the Ingersoll-Rand plant?

MR. WEINBAUM: No, we didn't.

THE COURT: Do you want, if he is going to refer to a survey–

MR. WEINBAUM: I would like to have a copy.

THE COURT: Do you want to examine as to the manner in which the survey was made?

MR. WEINBAUM: I would like to do that, yes.

THE COURT: You may.

BY MR. WEINBAUM:

Q Mr. Varga, what were the circumstances of your obtaining this information?

A Discussion was held at the board of directors meeting [fol. 800] Q And you are referring now to the Ingersoll-Rand survey?

A Yes. Actually, I don't have a typed-out survey. All I was interested in was the total number of people that were employed there, and where they resided, and how many salaried employees there were.

Q Do you have reference to two Ingersoll-Rand plants?
A Yes.
Q Where are they located?
A One is located in West Easton and the other one is located in Phillipsburg.
[fol. 801] Q One is in Pennsylvania?
A Yes. I am not really interested in the one in Pennsylvania.
Q Pardon?
A I am not really interested in the one in Pennsylvania.
Q You are only interested in the one in New Jersey?
A In New Jersey.

* * * *

[fol. 805] Q Will you state what was found from the survey.
A A total of 4,248 employees in both plants, with 250 employees in the West Easton plant of Ingersoll-Rand. Of the 4,248 employees, 2,160 were New Jersey residents with 2,088 Pennsylvania residents.
In the, what they call the blue collar workers, there were 2,528 blue collar workers, with 1,340 as New Jersey residents and 1,188 Pennsylvania residents.
The salaried employees totalled 1,820, with 828 in New Jersey and 900 from Pennsylvania.

* * * *

[fol. 806] Q Did you conduct a similar survey?
A I conducted a similar survey with the Baker Chemical employees. I didn't get the breakdown of the hourly and salaried workers, I just got a breakdown of the areas that they covered. The Phillipsburg people that I got, the people who live in Phillipsburg and work there, there are 230.

* * * *

[fol. 813] THE COURT: What other firms did you check on?
THE WITNESS: Riegel Paper Company of Milford.
Q And where do they have plants?

A They have plants located in Milford, Hughesville, Warren Glen and Flemington, New Jersey.

Q Did you leave out Riegelsville, New Jersey?

A Riegelsville, New Jersey.

Q These all five were northern Hunterdon County [fol. 814] near the border of the Musconetcong River, were they not?

A No.

Q They are all in northern Hunterdon County, are they not, with the exception of Riegelsville?

A With the exception of Flemington.

Q That is Hunterdon County.

A It is Hunterdon County, but not northern Hunterdon County.

Q Have you got a list?

A I have got statistics. They have broken it down into salaried employees and hourly employees, both residents in New Jersey and Pennsylvania. In some instances they have indicated where the person was working. Do you want me to read it?

Q When they work at Flemington they designate it?

A Yes.

Q And the other four plants?

A They don't designate.

Q And they set forth those that are in various parts of Pennsylvania and various parts of New Jersey?

A That is right.

MR. MEYNER: I should like to offer D-36 for identification.

Q And that shows roughly about half the employees—twice as many employees in New Jersey as in Pennsylvania?

[fol. 815] A Yes. They show a total in New Jersey employees of 1263 and they show 487 employed—live in Pennsylvania and employed.

Q Less than half?

A Less than half?

Q What other employment figures do you have?

A The other employment figures I have is for Sanco Piece Dye Works located in Phillipsburg, New Jersey.

Q When was this survey taken?

A This survey was taken about two weeks ago.

Q What were the circumstances?

A The circumstances involved here is that Sanco Piece Dye Works plant is going to close. The employees' names and addresses were submitted to the Phillipsburg area Chamber of Commerce for them to try to secure placement for the employees once the plant is closed.

Q And you got a summary?

A I got a summary of the list of employees that was given to the Chamber of Commerce, broken down into the areas of Phillipsburg, Easton, Bangor and Nazareth, Bethlehem, Allentown, Washington, Belvidere, New Jersey and even New York.

MR. MEYNER: I should like to offer this in evidence.

THE COURT: Any objection?

[fol. 816] MR. WEINBAUM: No objection.

(D-46 marked in evidence.)

Q Will you explain further the pattern of employment in the area as to where people live and as to where people work.

A Can I refer to these?

Q I mean from your general knowledge.

A From general knowledge we feel that there are 50 per cent of the people living in Easton and surrounding areas who are working in manufacturing plants in Phillipsburg, and we also feel that 50 per cent of our people work in the area described as the Lehigh-Northampton-Warren County area. The bigger plants I think in which we have employees in New Jersey would be the American Can Company, International Telephone & Telegraph. Bethlehem Steel, of course, would attract a lot of steel labor from the New Jersey side of the river. The commuting distance between the Phillipsburg and Allentown area is a matter of 20 minutes, Bethlehem 15 minutes. To commute to Riegelsville you're talking about 10 minutes from the center of town. With the traffic patterns people are very mobile in the Lehigh Valley area. They will do their shopping at quite a distance away from it. It all depends upon what kind of shopping they want.

Q Tell about your family. Where do they usually shop?

[fol. 817] A Taking my own case, I have charge accounts at Hess Brothers and I also have a charge account at Sears Roebuck in Whitehall Mall, which is just a little north of Allentown, maybe a mile of so outside of Allentown, and also I think in past history people have normally gone to Easton

from the Phillipsburg area to do their shopping because we didn't have the facilities, the shopping facilities like we have at the present time. It has only been recently that you could purchase a ready-made suit in the town of Phillipsburg.

Q Do you have much variety in that respect now?

A No. We only have one store located in the shopping center that is selling ready-made clothes, men's clothes. Orr's of Warren has stores located in Bethlehem, Easton and Warren County, and there is a flow of charge account customers between the three stores of Orr's. If they can't find it in one store they will go to the Easton store, if they can't find it in the Easton store they'll take another ten minutes and run down to Allentown to shop.

THE COURT: What is the traveling time between Phillipsburg and Allentown under normal conditions?

THE WITNESS: Under normal conditions I would say the maximum would be 20 minutes and the minimum 15.

[fol. 819] BY MR. MEYNER:

Q I questioned you about floor planning automobile loans, and I think your reply was that there were four or five a year?

A On automobile loans, yes.

Q But in applications for business loans, in excess of your lending limit, how many would you say there are in the course of a year?

A About 25.

* * * *

[fol. 824] Q Where have you seen areas of growth?

A The areas of growth are on the outer limits—are you talking about the Phillipsburg, New Jersey, area growth?

Q I am talking about the entire Lehigh Valley.

A The entire Lehigh Valley.

Q You can start with Warren County.

A In Warren County the area of growth has been to the northwest section of Phillipsburg. This would include the Township of Harmony, New Jersey; Lopatcong, Greenwich, White Township. There also has been growth movement to the [fol. 825] Southeast section. And this would include the

County. The area in Phillipsburg—a population of approximately 18,500—has remained pretty well constant over the last fifteen years. People have been moving into the suburbs of the city because of the lack of available land to build homes. There is no development land available in Phillipsburg alone, so they have been moving into the surrounding area. In conjunction with this, just recently both Lopatcong and Pohatcong have made extensive requests for funds in order to build sewer lines, which will eventually be connected into the sewage system of the Town of Phillipsburg. The People's Water Company has been extending their lines to the outer areas.

[fol. 826] Q Are you speaking of three borrowers of the bank?

A Three borrowers of the bank, yes. The growth in this area has diminished the total number of people that are now living in Phillipsburg, who are living in the outlying areas. In order to meet the convenience and needs of these people who are moving out into surrounding area, the area surrounding Phillipsburg, so that they don't have to come into the town proper to do their banking, we put a branch in January 1964, we opened a branch in 1964 in the Hillcrest Shopping Mall.

Q That is in Lopatcong Township?

A That is in Lopatcong Township, and later in the year, in August of '64, in order to serve the people in the Pohatcong and Alpha areas, we opened a branch office in Alpha, New Jersey.

Q Will you tell us about the growth of the Lopatcong branch since you opened it in '64.

A Well, the growth has been phenomenal. This is where most of our increase has been because of the commercial enterprises that are in the Hillcrest area. We helped to finance some business loans in the shopping center, itself. At the present time the branch office of the, the Hillcrest branch office has an excess of five and a half million dollars in deposits, both time and—time deposits, and also in demand deposits.

[fol. 827] Q Where are these people from?

A These people are from the northern section of Warren County and the eastern section of Warren County. They may extend as far as Hackettstown.

Q How about to the west?

A (Continuing.) And Washington. To the west it would be right to the Delaware River and into Easton. We pick up Easton accounts in our Hillcrest Shopping Center because the Downtown Easton area is suffering the same thing as Phillipsburg is suffering, their movement has been towards the west, they are getting closer out in the Townships of Bethlehem, residential area, there is more open land in that area to build newer homes and they are moving westward, while we are moving eastward in our community.

Q How about the industrial development? You gave us the growth of the Hillcrest branch, how about the Alpha branch?

A The Alpha branch, at the present time, has about three million dollars in time deposits.

THE COURT: Over what period of time?

THE WITNESS: Since August of 1964 to the present.

Q So from '64 to now you had a growth of three million in one area and five and a half million in the other?

[fol. 828] A Eight and a half million dollar growth.

Q You spoke of a plan to move further out.

A We would like to get an application for a branch bank located somewhere near the Harmony-White Township area, Hoffmann-LaRoche are planning to build a research and manufacturing plant just a little east of Belvidere and this would provide an emphasis for people to move into that area, to be in that area to go to work at the new plant.

Just recently in Lopatcong Township acreage was bought, about 500 acres of land was bought to construct apartment house buildings in the outlying—in the Lopatcong Township area. But of course I think we could service these people with our branch in the Hillcrest Shopping Mall.

Q How about the land purchased north of Phillipsburg?

A There were 5,000 acres of land purchased in Harmony Township along the Delaware River, but we don't know exactly what is going to happen to this, whether it will be an industrial development or whether it will be a residential development. We haven't been able to find out.

Q How about properties on the border of these municipalities, how about the prices?

A The prices have gone up, they keep raising, the land prices have gone up in the County.

Q Has banking by mail increased?

[fol. 829] A Yes. I took just a quick study of maybe—incidentally, I open the mail when I get in in the morning at the bank, so I can tell the volume has increased, because it used to take ten or fifteen minutes and now it takes me a half-hour to weed through the mail that gets in. But I think—

Q This is part of your executive duty?

A Yes. Now the reason for the increase in mail has a lot to do with the loans in the consumer field and the mortgage field. People today think nothing of writing a check and mailing a coupon to the bank, and they don't even bother to come in to make their payments any longer. I would say, if I had to take an average, I would say maybe 5 per cent of our daily deposits come through the mail. And I would say about 25 per cent of loan payments come in through the mail in a day's time.

Q What about the ages of the people in charge of management in both banks?

A I guess you can refer to them as senior citizens of the Town of Phillipsburg. Mr. Curry, who is president of the bank, is 71; Mr. Pursell, who is president of the Second National Bank, is 80 and Mr. Lester Pursel, who is executive vice president of the Second National Bank is in his 70's. My executive officer is 59 going on 60.

[fol. 830] Q That is the executive officer under you?

A The executive officer next to me. That is right.

Q How old are you?

A I am forty-one.

Q And how about the people under you or next in line?

A Next in line to me is a young fellow of twenty-nine.

Q And how about the Second National?

A Well, besides the two senior officers that I mentioned, the president and the executive vice-president, the next executive officer would be forty.

Q Do you know whether an effort has been made to get executives?

A Yes, I assume that the top management has been trying to get executive material into the bank.

Q What would you say are the advantages of a merger?

A Well, the biggest advantage to my way of thinking would be a specializing in the various services that the bank would offer. At the present time in small country banks you have men that handle every type of loan account. You sit at a desk and

you handle everything that comes through the door. Any questions, you have to know the answers. You don't have time to go out and call on your present customers, let alone go out and solicit new customers [fol. 831] for the bank, and I think the one advantage of a merged institution would be departmentalization with specialists assigned to various tasks in the bank.

Q Will you name the specialists?

A Well, the first one that comes to mind maybe would be a commercial and industrial loan officer.

Q What is the advantage of that?

A The advantage of that is that he would be able to review and contact existing customers of the bank. He could go out and look at their operation and look at their statements and analyze their statements and he could then make decisions as far as their financial arrangements.

Q And protect the bank, too?

A Yes, and also to see to the bank's investment, to see that the bank's investments are protected.

Q Do you have any such specialist in either bank at the present time?

A Not at the present time, no. We all try to do the job, but we just don't have enough hours in the day to do it right.

The next specialist I would say—we definitely need a trust department specialist to help set up a good trust department whereby we could generate business out of that trust department into the commercial and industrial field or into the mortgage field and also a trust officer [fol. 832] with enough knowledge to run the whole show, that we wouldn't have to deviate from our tasks to run the trust department.

Q Is there any solicitation of trust business?

A At the present time, no. We have a very antiquated trust department. They are still working with pen and ink and ledgers, not any automated equipment whatsoever. The trust department is operated by a very capable woman. We are trying to find a trust officer at this time and it is just impossible—

Q Is there a demand for a trust business in the area?

A Yes, there is a demand for a trust business in the area.

Q Why do you say that?

A I have had people ask me if I could offer them a trust service of a living trust, and things like this, and, of course, I referred them to our trust officer at the bank, whether or not

she can give the service I don't know. I am not that familiar with the trust business.

Q How about corporate trusts?

A We don't have any corporate trusts, as far as I know, but there are corporations in the area where we could solicit corporate trusts.

Q In the way of pension plans?

A In the way of pension plans and—yes.

[fol. 833] Q Are you familiar with how national manufacturers advertise in the area?

A Yes. We have a daily newspaper, the Easton Express. The Easton Express circulation covers—I think the circulation is about sixty-forty, sixty percent is in Pennsylvania and forty percent comes over into Warren County. The national advertisers consider the Allentown-Bethlehem-Easton-Phillipsburg area as a national market area, and whenever they want to sell a new product or introduce a new line of products they advertise in the Easton Express.

Q I show you Exhibit D-13 and ask you is that the brochure put out by the two newspapers to cover the area.

A Yes. This is the most recent one that was put out. There was one before this that the Easton Express put out and one that the Allentown Call Chronicle put out, but now there has been national advertising—they are telling in one brochure what both of them actually did in various others.

Q Does the Allentown Call Chronicle have, to your knowledge, morning circulation in Phillipsburg?

A Yes. They have very good morning circulation in Phillipsburg. As a matter of fact, I buy the paper every morning.

Q Does it have New Jersey news?

A It has a New Jersey news section and lots of times the [fol. 834] news—I don't have to wait until the evening paper. If something happens overnight I can read it that morning.

Q This comes from Allentown, Pennsylvania?

A It comes from Allentown.

Q The Easton Express is an evening newspaper?

A The Easton Express is an evening newspaper and has been for years.

Q Do you feel that you are essentially a commercial bank?

A No, not the way our assets are distributed, I wouldn't say we are a commercial bank. I would say we were semi—mostly a

savings institution being most of our deposits are in time deposits.

Q Do you think a merger would make a difference?

A I don't think so. I think the concentration–

Q Could you develop commercial and industrial loans to a greater extent?

A Well, if we had more capitalization this is where we would look to, to lending to commercial enterprises. The requests are getting more numerous. People want to expand their plant facilities. They want to do business with our bank, and if we can't help them I am sure they will go somewhere else.

Q If you had a merger is it planned to add to the capital?

[fol. 835] A Yes. It is planned to add to the capital.

Q Do you feel that with a merger you would have a better chance of getting capital?

A Yes, I do. With a larger institution I think there would be more requests for the stock than in two smaller institutions.

MR. MEYNER: That is all I have.

DIRECT EXAMINATION

BY MR. ROACHE:

Q I just have a couple of questions. Mr. Varga, you mentioned if the merger should go through you would specialize more and departmentalize the organization, and two methods of specialization would be a C & I officer and a trust officer. Are you presently satisfied with your mortgage department?

A No, I am not presently satisfied with the mortgage department. We just got away from that answer. Actually the area that we have already gone into–we specialize in the installment loan area. Prior to that time the loan departments in our bank consisted of mortgage loans, time term loans and demand loans, installment loans and they were all grouped together. Three and a half years ago we hired a specialist in the installment loan field. We worked with this system for a while and found out it was entirely impractical to have all the loan departments grouped together so we departmentalized the installment [fol. 836] loan department and broke it out of the loan department, put a supervisor in charge. We put a man on

the road to solicit accounts. We started out with about $800,000 which may be—let's say less than a thousand accounts. Within the period of time we went all the way up to three million dollars, and we had about 3,700 accounts. The department is broken down further into processing department and also the credit department, so we had a very efficient operation by which we could check credit in our immediate area or in Allentown-Bethlehem-Easton-Phillipsburg area within a couple of hours. We had a contact with a local credit bureau and it was just a telephone call away. This is what we would plan to do in the mortgage, commercial and industrial loan fields.

Q Are you saying that you would need an additional mortgage man?

A I would need a mortgage specialist, yes.

Q Would the merger bring any other benefits to the community?

A No.

Q In the way of other services, better services?

A Well, the services that we have now are comparable to the services that the other banks in the area have. As a merged institution we would probably have about forty million dollars in assets. I think I would look hard to [fol. 837] automation of some kind, some computerization of some kind. I think we would be able to provide a better demand deposit service with computerization, and I also think that eventually I can see time deposits being computerized and also installments and mortgage deposits being computerized.

* * * *

[fol. 838] CROSS-EXAMINATION

BY MR. WEINBAUM:

Q Mr. Varga, as vice-president are you in charge of any particular department or phase of the bank's operations?

A I am in charge of the loan operations.

Q Are you the chief loan officer of the bank?

A I would say so, yes.

Q And you have been in this capacity for how long?

A I have been in this capacity for only a few weeks.

Previous to that I was cashier of the bank and my concern would be operations and also loans.

Q What were the reasons for your promotion, so to [fol. 839] speak?

A Well, I think one of the reasons was delegation of responsibility, to make sure that one officer was responsible for the operation of the entire loan department.

* * * *

[fol. 842] Q Are you the only bank in the county handling VA mortgage loans?

A As far as I know. I may say I get references from other banks, if they have a good prospective loan and definitely a customer wants a Veterans Administration loan they will send them down to Phillipsburg to get it.

Q Can you describe some of the commercial demand deposit accounts that your bank has?

A Well, the larger commercial demand deposit accounts would be your payroll accounts for your large corporations in Phillipsburg.

Q Can you name some of them?

A Ingersoll-Rand, Baker Chemical, Sanco, these would be the bigger ones. Of course there are a lot of smaller payroll accounts, too.

Q And these are essentially demand accounts, payroll accounts?

[fol. 843] A Yes. The money is transferred by wire to our corresponding bank for creditor account and then it is placed on the books at our office.

Q Do you handle the general accounts for any of the large companies?

A The general account, the working account would be for Baker Chemical would be the only one. Ingersoll-Rand works with Marine Midland in New York, and I think Sanco does their business with a New York City bank.

Q Mr. Stillo of the consumer loan department was hired about three years ago?

A Yes, I think so—wait a minute, it could be a little longer. This is '68, I think he might have been hired in 1963. It could be five years now.

Q Would you say that the bringing of Mr. Stillo into the bank would have been largely responsible for the manner in which your installment loans have increased over the last five years?

A Yes. He is a specialist in the field and he has the feeder contacts.

Q He goes out and actively solicits this type of business?

A Yes.

Q Who was handling this type of business before Mr. Stillo came to the bank?

[fol. 844] A I was handling that business.

Q With respect to your commercial and industrial loans, Mr. Varga, how do you account for what appears to be a fairly good growth in this aspect of the bank's lending activity?

A May I ask if it is over a certain period of time?

Q Well, I refer specifically to the fact that during the time period 1962 through 1967 your commercial and industrial loans have increased from about $600,000 up to over two million dollars.

A From 1962 to 1967?

Q That's right.

A Commercial industrial loans expansion was primarily due to our placing of a branch office up in Hillcrest. There were some businesses that wanted to start in the shopping center area and we were able to satisfy their needs and we granted them loans when they started the shopping center. On the other side, there has been some industrial development in and around Phillipsburg, for example I can mention one, the Alpha Press Company, which is in the Alpha Industrial Park, came to town and they wanted to set up business and open up a manufacturing shop for hydraulic presses there, and we were instrumental in opening up that account and providing them with funds. I think there has been a general increase in the amount, dollar amount of the [fol. 845] requests for commercial and industrial loans.

Q Is this the Pennsylvania side of the river as well as the New Jersey side?

A I am just trying to think. I think primarily my commercial loans—there are a few in Pennsylvania, but the majority I would have to say are in Warren County.

Q And you work actively in the commercial-industrial loan field?

A Try to.

Q Which of the other officers of the bank have as some of their responsibility the matter of commercial-industrial lending?

A The president, Mr. Curry, and the executive vice president, Mr. Rittenhouse.

Q And do any of the three of you go out and call on prospective commercial-industrial customers?

A I haven't; I think Mr. Curry and Mr. Rittenhouse may have, but I haven't.

Q You haven't. What type of lending was it, Mr. Varga, you referred to that entailed a great deal of paper work?

A Oh, we are talking about participation in loans with corresponding banks.

Q These 25 requests a year that you get for loans in excess of your lending limit, how many of those loans [fol. 846] are you able to accommodate by means of participation?

A Well, I think in the answers to interrogatories we listed the ones that we accommodated in the last five years. I can't recollect the exact number, but I assume that I have had to turn some down, some developers that wanted to develop apartment houses and things like that, we had to turn down.

Q Did you turn them down on the basis of credit risks?

A I don't know whether it was on the basis of credit risk or whether it was just for the lack of funds.

Q Or may it have been on the basis of poor credit risk?

A As a matter of fact, I don't think it got, I don't think it got to a credit analysis before it was denied.

Q Do you participations ever work successfully?

A Yes.

Q Do your customers generally complain about the manner in which these participations are handled?

A On a few occasions there have been some complaints.

Q Have they nonetheless gone ahead and—

A If they needed the money they had no alternative except to pull out of our bank and go some place else. They would go ahead, certainly.

Let me explain a little about participations in our area. If you are limited to $100,000, which is 10 per [fol. 847] cent of the capital and surplus, and you get a request for construction of a new high school that is going to cost a million dollars, you know that you have got a Class A loan here because of the fact that it is a new school and the fact that you have got enough,

you have got credit experience with the persons that are going to build the school. I am talking about a private school right now. The prime reason that maybe our bank was chosen is that the school to be built was a local Catholic high school and the Pastor wanted to keep the money into the Phillipsburg area. So he asked us to get him the money and we, in turn, farmed out the loan between, as much as the banks could take in our area, with the exception of going across to Easton, Pennsylvania, we farmed out to the Second National Bank and farmed out to the Phillipsburg Trust Company and the excess then we went into Newark, and the excess that we couldn't get in Newark we went to New York.

[fol. 848] Q You didn't go into Easton?

A No, we didn't go into Easton.

Q Why was that?

A I couldn't tell you why we didn't go into Easton. But what happened is that we gave a rate, a very good rate for the loan. The money situation got tight and all of a sudden we had a call from the bank in Newark asking us to increase our rate on the loan. Rather than do that, and to offend the customer, we repurchased the amount of the loan that was due the Newark bank.

And this could happen more than once. Now, the paper work I am talking about is—as the lead bank you are responsible for all documentations, and filings, and making sure that the loan is handled in the proper manner and if it is a customer that we don't know well that's requesting these loans, it means that we have to make trips in to the City to discuss it with other banks, and their financial analysts take a look at the statements. And sometimes they turn us down flat. They say, "No, we don't want the loan. It's too risky." They have to maybe watch it closely. Maybe they have to watch it closer than we have to watch it, because they might be giving a larger proportion of the loan.

Q And when they turn it down on the basis of risk, is this the type of loan that under circumstances [fol. 849] where you could accommodate the thing, you would, in spite of the risk?

A Well, I know in spite of the risk, some of these loan requests that we have had from people that we started in business, maybe their financial statements don't look so good, but we rely entirely on their character, and how they have

treated us in the past, whether they have caused us any difficulty in the past.

Q Mr. Varga, you referred to a couple of local building and loan associations in Phillipsburg. Are these building and loan associations very active?

A Well, they have been in business for an awful long time. Of course, they are not large institutions like the Federally-chartered savings and loan associations. But over a period of time they have made friends, and they have made customers, and their customers will stay with them. As far as the assets, maybe we are talking about—out of the two of them, maybe we are talking about a million dollars in one and maybe eight hundred thousand in the other.

Q And Mr. Rittenhouse, your executive vice-president, is connected with one of them?

A He is connected with one of the building and loans, yes.

Q What is his relationship with them?

A I think he is treasurer of the association.

Q Can you characterize for us, Mr. Varga, the growth [fol. 850] of your bank over the last five years, 1962 through 1967; do you feel your growth has been good?

A I think it has been healthy, yes. I think the reason that it has been healthy, because we have moved out the downtown Phillipsburg area out to where the customers are. We advertise in the local newspaper. And I think we have a healthy growth. I think we have a lot of satisfied customers.

* * * *

[fol. 853] JOSEPH CONROY, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?

A 4475 Charles Street, Easton, Pennsylvania.

Q What is your present position?

A I am president of the Valley Federal Savings & Loan Association in Easton.

Q Will you give us briefly your business background?

A I graduated from high school in 1942, entered the Naval service and upon leaving the service entered Churchman

Business College, graduating after specializing in accounting. I was employed for a short time by J. T. Baker Chemical Company in Phillipsburg. I then joined what was then the Westport Building & Loan Association in 1947, then converting to the Easton Federal Savings and presently Valley Federal Savings.

Q Will you describe the growth of Valley Federal Savings?

A I joined that institution in 1947. At the time it was approximately two million in size. In 1953 we were approximately four and a half million in size, and today in the area of thirty-nine to forty million in size.

* * * *

[fol. 854] Q You have a large number of mortgages in Lehigh County. Do you have an office in Lehigh County?

[fol. 855] A Yes, we do, at Club Avenue and Union Boulevard in Bethlehem.

Q Are these mortgages attributable to that office?

A To a great extent, yes.

Q When was the office opened?

A In May, two years ago.

Q Did you not have quite a few mortgages before you opened that office?

A We did. That was the reason for opening the branch.

Q Of the total mortgages in the Allentown area what percentage were attributable to the new office?

A Approximately sixty percent.

Q What rate of interest have you been paying?

A On savings?

Q Yes.

A Four and a quarter at the present time.

Q Can you give us an account of the interest rates you charged in the last ten years, roughly?

A Well, the past year and a half, last year and nine months perhaps, four and a quarter, four percent for about a year or a year and a half prior to that, and prior to that three and a half.

Q In other words, you were a little higher than the other banks in the area?

A Yes.

[fol. 856] Q And you presently are?

A Yes.

[fol. 857] Q Have you noticed any changes in the last two months?

A Yes, with the influx of various types of certificates there has been a change in the money market in the Lehigh Valley area.

Q You mean there is a shift to withdrawals?

A There is a shift to withdrawals, yes.

Q And where is that going?

A To the best of my knowledge, I would believe it is shifting to the commercial banks, with their 5 percent certificate. Although we do have 5 per cents, but our minimum is much higher than those of the commercial banks.

Q Do you advertise in the local newspapers?

A Very heavily.

Q What newspapers?

A We use the Easton Express in Easton. There will be an ad appearing in the Washington paper in approximately two weeks, soliciting savings. We advertise in the–

Q That's in Washington, New Jersey?

A New Jersey, sir.–the Bethlehem Globe-Times in Bethlehem, and the Allentown Morning Call, both the daily edition as well as the Sunday edition.

Q You have better than 300 mortgages in Warren; have you ever made any personal solicitation for those loans?

A We do not.

[fol. 858] MR. MEYNER: Cross-examination.

CROSS-EXAMINATION

BY MR. WEINBAUM:

Q Mr. Conroy, that list that you prepared of your mortgages, does that represent your current mortgages on the books?

A It represents our entire mortgage portfolio, yes.

Q And what is the total number of mortgages in your portfolio?

A 3,130.

* * * *

[fol. 860] LESLIE ADDISON FISH, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Mr. Fish, where do you live?
A 180 Bowers Avenue, Phillipsburg, New Jersey.
Q And you are engaged in business?
A Yes.
Q Under a corporate name?
A Yes.
Q And what is the corporate name?
A L. A. Fish Engineering Company, Incorporated.
Q And where is your plant located?
A On Route 22 about a mile and a half outside of Phillipsburg.
Q This would be in Pohatcong Township?
A Actually it is in Greenwich Township.
Q Will you describe your education and business background.
A I graduated from high school in 1930 and received an engineering degree from the University of Michigan in 1934. I was employed by Ingersoll-Rand Company until 1944, and had a short employment with Consolidated Vultee in Allentown, and then became Assistant Chief Engineer for Binney & Smith [fol. 861] Company.
Q In Easton?
A In Easton, Pennsylvania. I left Binney & Smith late in 1945 and shortly thereafter established the Fish Engineering Company.
Q And what is the nature of that business?
A Today we are primarily a manufacturing operation. We had started out on a combined engineering, design and manufacturing basis. We still do engineering and design, but this is a minor part of our business.
[fol. 862] Q How many employees do you have?
A Approximately fifteen.
Q What would you say your total assets would reveal on the balance sheet?
A Between $250,000 and $300,000.
Q What are your present borrowing—well, strike that. What have your borrowing needs been in the last five years?

A Well, in early 1967 we arranged a loan of $115,000. Previous to that we had done no borrowing in a two-year period or three-year period. Over the last ten years we have borrowed at various times in the range of $30,000 to $40,000.

Q What do you contemplate your borrowing needs will be in the next few years?

A We are getting into more sophisticated types of machines, which are high priced; our latest acquisition, a year and a half ago, was a $65,000 installation. The next ones, in all probability, will be in the range of $100,000 per machine.

Q What do you contemplate your credit needs then to be?

A The situation obviously has to be determined when it arises, but I would say that our needs will be between $100,000 and $200,000.

[fol. 863] Q Where are you banking presently?

A At the Second National Bank in Phillipsburg.

Q Would a merger of these two banks be of assistance to you?

A I believe a larger bank in Phillipsburg will be a definite asset to me.

Q For how long a period do you usually want to borrow money?

A Our history has been on machinery purchases we have borrowed on the basis of three to five years.

Q Isn't it possible to get this through the company that sells you the product?

A Yes.

Q Why do you prefer the bank?

A It is much more convenient to do business locally and it is cheaper.

MR. MEYNER: Cross-examine.

CROSS-EXAMINATION

BY MR. WEINBAUM:

* * * *

[fol. 864] Q You indicate that in 1967 you had a loan of approximately $115,000?

A Yes.

Q With the Second National Bank?

A Yes.

Q What type of a loan was that?

A It is a combination loan, part of which is a mortgage on our real estate and part of which is a chattel on our capital assets.

Q How long a term of mortgage is that on your real estate?

A The real estate is–

Q Approximately, if you know.

A I think the real estate is twelve years and the chattel is five years.

Q And was this loan made to purchase the real estate or was the real estate put up as a security?

A The real estate was put up as security.

Q This money to be used for working capital purposes?

A At the time of the loan I had a mortgage already on [fol. 865] the real estate with another bank, and in order to make the loan more convenient for myself we worked out an arrangement whereby the real estate phase of it was paid off in one bank and consolidated in a single loan with the present bank.

Q What was the other bank that you had been dealing with?

A That was with the Lafayette Trust Company in Easton, Pennsylvania.

* * * *

[fol. 866] Q And has all this borrowing been either in Phillipsburg or in Easton?

A Yes, it has.

[fol. 867] Q Do you regard the Easton National Bank as a source of funds for your business?

A It is a potential source of funds, yes.

Q And is it a bank that you might turn to to borrow large sums of money?

A I would prefer not to.

Q Why is that?

A The general borrowing climate, if you will, I find has not been as pleasant or as easy to do business under as the Second National Bank in Phillipsburg.

Q And might the same apply with respect to the Lafayette Trust bank?

A My experience with them was better than it was with the Easton National Bank.

[fol. 869] JOSEPH G. VARGA, resumed, having been previously duly sworn, testified further as follows:

CROSS-EXAMINATION (CONTINUED)

BY MR. WEINBAUM:

* * * *

[fol. 870] Q In your opinion, would you go out and hire a commercial lending officer if the banks remained independent?

A I doubt it.

Q Do you have any idea of the amount of additional commercial lending activity your bank would have to do before such a man's salary would be justified?

[fol. 871] A I can only give an approximation. I would say we probably would have to almost double.

Q Almost double your size?

A No, double the size of our commercial and industrial lending activities in order to warrant a full-time commercial loan officer.

Q Do you feel that immediately upon merger the banks will then go out and hire a commercial and industrial lending officer?

A It very well could be. Yes.

* * * *

[fol. 873] Q But if there was a large demand for loans in excess of $50,000, somewhere under your $100,000 lending limit, isn't it likely that your bank would have done more lending in that size category?

A I would like to know what year you would be talking about.

Q I'm talking about 1967.

A 1967?

Q The loans shown on your book as of the end of the year.

A The loans shown on the books in 1967—let me look. I have a list. The possibility may have been that there [fol. 874] wasn't just that much money available to loan out

between that range, because we had commitments for other types of loans. We had loans requested from the Township of Lopatcong, $265,000.

Q That was handled on a participation?

A No it wasn't. It was handled by the bank. We were allowed to take municipal bond anticipation notes in any amount we would like to, but of course this is a service to the community. They were going to put sewer lines in and we anticipated, we knew they were coming into this, so therefore we wouldn't be interested in lending out a lot of money to other people if we have to meet their commitment. That was just one. The County of Warren was $150,000. Pohatcong Township was another quarter of a million, and there you are talking about well over a half-million dollars with three customers.

Q You took those?

A We took those, and as a matter of fact we also participated this issue. I think it was somewhere in the neighborhood of a million dollars with each one of these issues, and we participated with local banks in the Town of Washington, Belvidere. As a matter of fact, we even asked some of the banks in Newark to take some of these loans over.

Q Mr. Varga, you indicated yesterday that your bank did some lending on the basis of a man's character loan, a [fol. 875] character loan.

A Yes.

Q Do you do much of this type of business lending.

A I think a lot of this is character loans, personal character loans in our area.

Q People who have lived in the community?

A Yes. We would know the customer personally for a good number of years.

Q And if these people can't get money from you, where do they go? Where can they go to get their money?

A They would have to make arrangements from other banks in the area.

Q Is it likely that a person who can get a loan only on the basis of character could go out to Belvidere or Washington or Hackettstown or to a large city and get money?

A Just on the basis of character?

Q Yes.

A It would be very difficult.

Q And do you believe you serve the community in this way, Mr. Varga, by giving loans to people because they are reputable but their financial statements just don't measure up.

A Their financial statements may be a little weak.

[fol. 876] Q Do you feel you were serving the community in this manner?

A Yes.

* * * *

[fol. 877] Q To your knowledge, are there any banks in Warren County with a trust department?

A With trust departments? Yes. They have trust departments, but none of them are very large.

Q Do any of them have a full-time trust officer?

A Not to my knowledge. I don't think there is a full-time trust officer in Warren County.

Q Can you explain, Mr. Varga, a little bit more fully, why you believe you need a mortgage specialist?

A A mortgage specialist would be able to service the community better than a part-time specialist. Let's put it this way, if I am waiting on customers in the back and I have to take a mortgage application and I have to review with the applicant what type of mortgage loan he wants, whether it is an FHA or a VA or a conventional, I have to go through [fol. 878] and explain everything to him three or four times, and he decides what type of loan he wants. A mortgage specialist I think, he would know exactly what would best suit this man's needs and wouldn't have to even explain it. He would set up an FHA mortgage, a VA mortgage. Also we don't have mortgage services like large banks do where they can use a secondary mortgage market and things like that. It is not my understanding. It is not in my realm of knowledge.

Q Is it your view as a lending officer that as your bank grows you would want to cut down on your mortgage loan activity?

A I don't think it is going to be possible. I think the demand for mortgages will continue high and maybe even get higher.

Q So it is really a question of your time, being able to devote your time to this type of activities as the activities increase.

A As it increases, yes.

Q There is by no means any lack of sufficient expertise on your part with respect to reviewing mortgage loan applications.

A I have made a few mistakes.

Q Well is this uncommon?

A No.

* * * *

[fol. 880] Q And is it true that your situation then is a very common situation with respect to country banks of your size?

A You mean that one officer handles all general types of loans?

Q Yes, sir.

* * * *

[fol. 881] Salaries are important because it cuts into your profits and your earnings. I am trying to think what I would pay a good mortgage officer. And I think what would happen actually—what would happen would have to be an upgrading of all the salaries, not just hiring a mortgage officer and say, "We will pay you X number of dollars," but I think it would have to be a general upgrading of the salary scale throughout the whole bank, with the other officers in mind, too.

Q Have you reviewed the financial condition of the bank in order to ascertain whether—

A No, I haven't reviewed the financial condition of the bank in regard to a general increase in salaries in order to provide open spots for specialists to come in, I haven't done that.

* * * *

[fol. 882] Q The bank has been paying good dividends, has it not?

A They are constant and I would say they are good dividends.

Q And don't you have a man on the payroll at the present time, an officer, who is receiving a fairly sizeable sum

of money and is quite inactive in the daily activities of the bank? is this not a fact?

A I don't follow your question. We have an officer that is what?

Q That is inactive, yet draws a fairly sizeable sum of money, salary?

MR. MEYNER: Why doesn't counsel suggest who it is and how much? We furnished all this in interrogatories.

A Are you talking about our chairman of the board?

Q Yes, sir; Mr. Tirrell.

A Mr. Tirrell. Yes, we do.

Q And he is on your payroll?

A But I don't know whether you would call the salary sizeable for the chairman of the board of a bank.

Q He is inactive, is he not?

[fol. 883] A He hadn't been inactive up until maybe a year ago.

Q But he has been inactive over the last year?

A I would say so.

Q And he receives approximately $7,500 for this inactivity.

THE COURT: How long has he been associated with the bank?

THE WITNESS: He has been associated with the bank ever since I have known him. And he is a man who is eighty-three years old. And he was formerly president of the bank, he is chairman of the board now, and I think his activities slowed down due to his age. But I can remember when I first came to the bank that he was very active, and I think he solicited a lot of business for the bank.

THE COURT: And when did you come with the bank?

THE WITNESS: I came to the bank in 1951.

THE COURT: And he was there then?

THE WITNESS: He was there then.

* * * *

[fol. 884] Q What do you mean by a competitive factor?

A We feel that we want to compete with the banks in that area for the business that would be generated in that

area. We have to reach the customer. The customer is not always going to come down to us.

* * * *

[fol. 887] REDIRECT EXAMINATION

BY MR. MEYNER:

Q You discussed the hiring of specialized people. Would you tell us what different approach there would be with reference to a merged bank as contrasted to a single bank?

A As a merged institution I think we would be better able to attract qualified people to work for us. As a smaller institution, I think there is a less attraction of qualified talent to work in a small bank.

Q And how about the volume of work he would have?

A Also the volume of work—well, the volume of work [fol. 888] would be very important. The volume of work that we have as a small bank is getting more and more every day. And I can see where if we weren't merged there is a possibility that we would just have to hire somebody to do the detail work. Whether he was a specialist or not, he would have to get his training from us as to what we want him to know.

Q But can you get the specialist, if there is a merger?

A I think so. I think so.

Q What are the loan limits of the banks that you described in the area; is there a bank in Hunterdon County and in Northampton County that has larger loan limits?

A The Hunterdon County National Bank's loan limit is around $300,000 for individuals, partnerships or corporations.

Q And does Hunterdon County have any town the size of Phillipsburg?

A No, all the towns are smaller than the size of Phillipsburg.

Q And in Northampton County the loan—

A The loan limit in Northampton County would be—the Bethlehem bank would be the largest, I would say, with Easton National—I just can't remember what the First National Bank of Bethlehem—

Q How about Northampton National, even though [fol. 889] they are—

A Even though they are not an active bank, or out soliciting, their loan limit would be well over $250,000. $300,000.

Q Even though it is about the same size as yours?

A About the same size as ours, but their capital and surplus structure is entirely different than ours.

MR. MEYNER: All right.

REDIRECT EXAMINATION

BY MR. ROACHE:

Q Referring to your mortgage lending department, how do you presently have your property appraised when there is an application for a mortgage loan?

A We do the appraisals on our own. We have a board of-director go out with one of the officers of the bank, either Mr. Curry or myself, or Mr. Hartwig, and get an appraisal of the property.

Q Would a mortgage specialist help in this area?

A Yes, he would. He would have the knowledge of the type of structures—he would have knowledge of what kind of appraisal he can make.

Q Is there advantage or disadvantage to your present setup in this respect?

A Yes, there are things that we may overlook that a qualified person may not. He would pick out defaults quicker than we can.

Q Is it your plan or intention, if the merger should [fol. 890] go through, to hire a C & I specialist, a trust department specialist and a mortgage department specialist, all three?

A Yes.

Q Is that possible under your present situation?

A I don't think we could afford it right now. I think it would be expensive—it would be expensive and it would be a burden on the profits and the dividends for our shareholders.

* * * *

[fol. 892] ALFRED KURLAND, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Mr. Kurland, where do you live?

A 37 Colby Place, Phillipsburg, New Jersey.

Q Would you describe your business background?

A Well I left college in 1938, my senior year.

Q Where?

A In Brooklyn. I went to City College in New York, and went to work for Hudson Pulp & Paper, scheduling production. I left Hudson Pulp to go into service and when I came back I returned to a job there and went into business for myself. I bought a liquor store on Times Square in 1946. I sold that in '48. I looked around for a year and bought a store in New Jersey. I now have a liquor store in Phillipsburg.

Q What is the name of that liquor store?

A Al's Liquor Store, and in 1957 I took the exam for registered representative to sell securities, and in '58 I took the exam for—you don't take the exam. I was licensed by the SEC as an investment counselor, and in '59 I opened up my own brokerage house. I have a broker-dealer license.

Q Do you hold public office?

A Yes. I am Commissioner of Finance in Phillipsburg.

Q Since when?

[fol. 893] A Since 1962. I was first elected in '62 and re-elected in '66.

Q Will you tell us what the area is where most of the people work in and around Phillipsburg?

A You mean where the Phillipsburg people work or where the people that work in Phillipsburg come from?

Q Would you describe, for instance, the manufacturing area?

A I would say it goes from Allentown through Phillipsburg to Washington and then down almost as far as Trenton. I would say it is really the Lehigh Valley, part of Hunterdon, part of Warren and a good part of Lehigh and Northampton.

Q And where would you say the manufacturing plant employees in Phillipsburg come from?

A Well obviously a good fraction come from the town itself. I would say about half the people that work in Ingersoll-Rand come from outside of Phillipsburg, Easton, Bethlehem and maybe even Allentown. I could give you an exact report on that. We had parking trouble alongside Shahmoon Industries. They hire about 300 people, and although Shahmoon provided a lot they wouldn't park on the lot. They would only park on the street, and they blocked all the houses there, so we took a survey of license plates to find out where they came from, and about two out of three had Pennsylvania plates.

[fol. 894] Q How about the shopping patterns?

A Well, there really is not too much in Phillipsburg. You can't get a suit of clothing, for example. I would say the bulk of Phillipsburg people shop in Easton with a very high proportion going to Allentown. I know we see Hess' truck on our block every day.

Q How about the growth of business in the area?

A Well, business itself has been growing, but the downtown area has not. It has been deteriorating in Phillipsburg.

Q That is the South Main Street area?

A Yes. It has been going down steadily.

Q Where is the growth?

A On the outskirts. The growth is—for example, in the last few years the Hillcrest Shopping Center was built, and that is not even in Phillipsburg. That is right on the border line of Pohatcong. There has been a big springing up of little businesses along Memorial Highway.

Mr. Fish was here. He was from Pohatcong, and this is comparatively recent. I forget the company's name, but the old United Can in Alpha is building—most of it is outside the town. Actually there is no room in town because it is a mature area and it is all built up. You couldn't find a good-sized piece of acreage anywhere.

Q In Phillipsburg?

[fol. 895] A In Phillipsburg.

Q Have you noticed a similar growth in the Pennsylvania area?

A Well, Easton, which is right across the river, which in effect is really one town, Easton-Phillipsburg—is cursed by the same thing. They are also all built up so all the Eastonian

growth is out of the actual limits of Easton, Wilson, Palmer and Forks, and so on. The ITT plant is out in Palmer. The S. I. Handling went out to Forks.

Q Now let's take the first of your businesses, the liquor business, where would you say are the areas of your customers?

A Well, surprisingly, I do a large business from Pennsylvania. I have a lot of customers from Allentown and Bethlehem and Easton.

Q Would you say there are many people in institutions engaged in taking people's dollars for investment purposes?

A Very much so.

Q Will you describe their activity?

A Well, I myself advertise in the Easton Express, Kurland Securities. I am about to advertise in the Allentown Morning Call. As a matter of fact, I am supposed to see them next week. That is as far as securities.

All the other brokers in the area like Merrill, [fol. 896] Lynch in Allentown, Fahnestock in Bethlehem, all advertise in the Easton Express and the Allentown Call and the Bethlehem paper and so on.

As far as brokerage competition is concerned, the brokers are advertising on the radio. They are looking for the dollar. The mutual funds advertise through me and also on their own. Insurance companies salesmen—yes. I would say it is very intense. Everybody wants a dollar.

Q Did you mention Government bonds?

A I know they are advertising heavily too. They don't take too well.

Q Would you have an illustration of your sales in any particular month?

A In which business?

Q In your security business.

A Yes. I have to keep certain records. I have to have a security position every month and I have to keep track of a lot of things, and every once in a while I go over my business to see how—where it comes from. I would say that the bulk of my business—

Q Do you have specific periods that you could show us where you sold your shares of stock, for instance?

A Yes. I have July, August and September. It is in my briefcase.

Q Yes, would you get it?

[fol. 897] A (After procuring paper.) Well, taking July, I sold 300 shares in Easton, 519 in Phillipsburg, 1,020 in Allentown, 100 in Alpha, 100 in Blairstown and 2,000 shares in other areas. In August there was 140 in Easton, 467 in Phillipsburg, 500 in Allentown, 630 in Alpha. 1,621 in other areas. That would be like Reading and so on, and 45 in Blairstown, and so far until this Saturday night, until up to this Monday, in September I sold 200 in Easton, 169 in Phillipsburg and I had a couple of good sales—10,670 shares in Allentown—and let's see—100 in Reading and 4,315 in other areas—oh, I sold $9,000 worth of bonds in July in Easton and forty-three and a half thousand of bonds in other areas.

Q What would you say a typical day's receipts in your liquor business would show?

A Well I'm running about a quarter of a million a year, five thousand a week. I would say I take in about $500 on a weekday and about a couple of thousand each—no—about fifteen hundred on Friday and fifteen hundred on Saturday.

Q What is your total volume in sales of securities in a year?

A It has been growing very rapidly. Last year wouldn't be a good criterion of this year. Last year I did as much business as I did all the years previously and so far this year I have matched all of that.

[fol. 898] Q What do you estimate 1968 will hold in the way of sales?

A I think I should do easily a million dollars. That is the value of the securities, that is not what I make.

Q As Commissioner of Finance, do you ever endeavor to borrow money for the Town of Phillipsburg or the Board of Education?

A Well, the Board of Education does their own borrowing, but we are presently engaged in a capital expansion and we have taken down $360,000 in bond anticipation notes, which I believe the Second National has. Depending upon how the market looks we will either float a $3 million bond issue in the near future or we will take bond anticipation notes to that amount if it looks like interest rates are going to stay high instead of dropping lower. Should we take the bond anticipation notes we will try to toss as much

of it out to local banks as we can. They have been very cooperative for the most part.

Q Are you a seeker of credit?

A All the time, yes.

Q Where do you borrow?

A All over. I presently owe money at the Lafayette Trust, the Easton National, the Phillipsburg National, the Second National, Phillipsburg Trust. I had a loan at the Chemical Bank in New York. I paid that off last year.

[fol. 899] Q Are you familiar with the lending practice and the activities of the loan officers at the various banks with which you do business?

A Yes.

Q What would you say about a merger of these two banks so far as your doing business with them is concerned?

A I would welcome it because of the loan limits. For example, at the first of the year when I was more heavily committed in the market than I am now, I owed about five hundred-odd thousand dollars to the various banks, and I hit a loan limit at that time of about $100,000. I don't know if it was just around that time, but I know at one time Mr. Murray told me they wouldn't go over a hundred thousand. I hit that limit. I hit an $88,000 loan limit at the Second National and a hundred thousand loan limit at the Phillipsburg Trust, so I had to go into Easton. Actually I think it would be much more convenient. For one thing, I think that a larger bank could afford to have somebody in their loan department that would do that only, that would be more familiar with securities. This is not derogatory to any bank.

Q Especially since you are a borrower.

A Yes. Sometimes I have to explain to them what may or [fol. 900] may not be done, you know, and someone who is more familiar with it—I also feel that if they could afford to hire or be large enough to have someone with some knowledge of this, I think they would do a lot better in their business. There are a lot of collateral loans that are going begging.

Q Where do they get it?

A Sometimes they don't even know they can get it. Well, usually they go elsewhere. I imagine that the banks in Allentown do a lot of that. They are much larger.

Q Is there a need in the area you have described for trust services?

A Oh yes. I think this is a very big thing. I know this has happened to me, so I'm sure it has happened to the rest of the community. The country has become more affluent and the average workman today is coming into my place and spending—the average workman today is much more affluent. I am doing a security business today with people that never dreamed of owning a share of stock, and one fellow asked me to set up a sort of estate based on mutual funds, and he was talking about five or six thousand dollars. This is about three or four weeks ago, and I told him if anything happened it would be worth a lot more money. Most people don't realize they have an estate. There is insurance and if the house is sold this is a lump sum and there are many other things that are worth money that [fol. 901] don't show up until there is an estate, and frankly a lot of women—we live in an area where there a lot of foreign-born people, and some of them are not terribly educated, and a lot of these people should have some sort of reliable trust setup so the estate wouldn't be dissipated or improperly handled.

Q How about pension funds?

A Oh, well every union is looking for a pension fund, and the way some of them are being handled I think it would be a lot better if a trust officer looked after them.

MR. MEYNER: Your witness.

CROSS-EXAMINATION

BY MR. WEINBAUM:

Q Are you a stockholder in either of the two banks?

A I am a stockholder in the Phillipsburg National and I'm also a stockholder in the Phillipsburg Trust. I used to own Second National but I sold that.

Q You testified that you see this Hess Brothers truck out in front of your home every day?

A Not only that, but my wife has a charge account there, unfortunately.

Q And there is not a place in Phillipsburg where you can get a suit of clothes?

A No, the only clothing store is Ponzi who has maybe ten or twelve suits on the rack and that's about it. Until

[fol. 902] the Hillcrest Shopping Center opened up you couldn't—unless you bought very low-grade shoes—you couldn't buy a pair of shoes in Phillipsburg. The downtown area has deteriorated quite a bit since I have been there and all the other stores have moved out.

Q Are there any plans presently to do anything in the downtown area in the way of renovation?

A Well, there was an urban renewal plan about three years ago which was defeated. We hope to do something, but so far there seems to be a decided lack of enthusiasm among the population. We don't have a certified working program which we are trying to have.

Q In your opinion, is there a fairly complete shopping facility over in Easton?

A No, not too much.

Q Several department stores?

A They have small department stores. They have a lot of good specialty shops, but if you want a real choice you have to go to Allentown. You have to go to Hess Brothers.

Q There are good men's stores in Allentown?

A Yes. Levin is good. Jake Mayer is good, but I am speaking of real choice furniture and so on. You still have to go to Allentown plus the fact that since the new traffic pattern has been established in Easton even to go to Lafayette Trust it's taking me half an hour to travel [fol. 903] six blocks.

Q This is because of the one-way streets now?

A They have changed the pattern.

Q You indicated that your liquor business is mostly from Allentown, Bethlehem and Easton.

A Well we do about—I say a third from the local population and a lot of people come—

Q What do you mean by the local population?

A People in Phillipsburg, and I would say the bulk of it comes from people who come over and shop, not only with me, but all stores in Phillipsburg—come over. There is a special situation there. They have state stores in Pennsylvania. You have to buy out of a pamphlet. You can't look at what you are buying. You can't ask for any advice on you know—what the different liquors are and so on. They won't even carry it to the car if it is a large package, and most of them come because of convenience.

Q Do people come down from Allentown and Bethlehem to do their shopping in Phillipsburg?

A In liquor, not too much in other things because they have that at home.

Q They come down specifically for their liquor shopping?

A Yes. I think sometimes they might still come to some [fol. 904] place like Hillcrest because of the difference in sales tax which might be worthwhile on large items.

Q What were your total borrowings last year, Mr. Kurland, approximately?

A On the first of the year I owed 571,000 to the banks, and I think I owed about 130,000 on margin account. I believe—we have to file a security position with the SEC. I mean we have to have it ready for inspection for the Securities & Exhange Commission, and as of August 31st it was 60,000 at Lafayette Trust. Did you ask me for the specific or the total?

Q No. I asked for the total, but give me the specific since you have it out.

A All right, Phillipsburg Trust 100,000. Phillipsburg National & Trust 34,000. Easton National 32. Second National 45. I have lightened my position in the market since the first of the year and paid off over 300,000, and my portfolio is smaller.

Q Did you indicate this was kind of a heavy borrowing year for you, this last year?

A Well I have been making more money, investing more and borrowing more. Yes. 1967, the first of the year, was the most I ever owed, and if things turn around in the market I hope to go back to that.

Q Is it your preference to have many alternative [fol. 905] sources of credit available to you?

A Well, my loans are mostly collateral loans, so nobody really turns me down because of the fact that it is the ideal loan. If something happens to me that I don't pay they simply sell my collateral on the open market and that's that, so I don't anticipate being turned down particularly, but it is a nuisance to have to run from bank to bank to bank.

Q You would rather get one collateral loan from a single bank?

A No, I wouldn't want one from a single bank, but I would like to instead of having three sources in Phillipsburg,

one or two would be enough, and in Easton I think one or two would be enough. The main thing is that it is much handier to have a large loan. I know there are a lot of people that I know of, customers of mine, who buy securities from me who find that it is a nuisance to, you know, to be limited as to the amount of borrowing you can get from any single bank.

[fol. 906] Q A lot of your customers borrow money in excess of $100,000 from the bank?

A No, not a lot, I am thinking of just one–just two.

Q That license plate survey that you did outside of Shahmoon Industries, that told you that there were so many cars from Pennsylvania, so many from New Jersey?

A Yes, the people who live along Sitgreaves Street couldn't park in front of their own homes. It is a great big long street, I'd say a good quarter of a mile, or maybe even longer, and the plant is directly aside. The plant is on one side, the homes are on the other. And the people who work in Shahmoon would park all day in front of these homes. We had all kinds of complaints, but as long as they are legally registered vehicles, they have a right to park any place, you know, that's permitted. And the chief took a survey. We wanted to know if the people were complaining legitimately. We took a survey and a good two-third–a half to two-thirds–I remember it was a major fraction, I don't remember exactly–were Pennsylvania plates.

Q You don't know from where in Pennsylvania?

A I would imagine from Easton, a few from Bethlehem. The people in our area work all over. We have people in town who work in Riegelsville; I'd say several hundred work in Bethlehem Steel, and so on.

[fol. 907] Q Well, you have never done a detailed survey of this?

A You mean on who works where?

Q Right, specifically from what cities they come.

A No. I believe the plants have something like that. I would be pretty sure that Ingersoll-Rand would have something like that.

Q But you have never done any specific survey?

A I personally, no.

* * * *

[fol. 908] EMANUEL GNAT, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Mr. Gnat, where do you live?
A 145 West 86th Street, New York City.
Q Where do you work?
A At the Prudential Insurance Company, home office, Newark, New Jersey.
Q And what is your position?
A I am the associate director and chief of the planning and analysis staff, Eastern home office.
Q Would you give us your business background?
A I was a salesman of insurance, a field manager of insurance sales, a home office head of advanced underwriting sales, and the home office head of all sales training, and in 1966 was promoted to the current position I have.
[fol. 909] Q And would you describe the nature of that position?
A Primarily we are set up to coordinate the plans and activities of all of our departments toward the achievement of the common aims of the company.

Our functions are primarily in four areas. One is research—marketing research, research; management information, the gathering of data that pertains to decisions on the tables; planning, the coordination of all plans of departments to achieve given ends; and analysis, which would constitute analysis of our own functions, our own operations, and those of any endeavors that bear on us.

Q Does the Eastern home office have any concern with the ABE—Allentown-Bethlehem—Easton Metropolitan statistical area?
A The ABE is in our jurisdiction, yes.
Q And have you made a study of this area?
A We have made many studies of the area. They are necessary to our marketing functions.

Q Would you describe the relationship of insurance to other methods of investment in this area?

A Well, I categorize those as financial intermediaries, those that are responsible for collecting savings or investment dollars, and distributing them in debt capital. I have broken them out in industries: the banking industry, which [fol. 910] has commercial banks, savings and loans. I consider credit unions in that category as an industry. I consider government as an industry that definitely competes for the savings dollar. Of course, the insurance industry, the equities industry—that would include mutual funds, and so on. Savings and loan back up in the banking industry.

But I would say the banking industry, the equity industry, the government industry, the insurance industry would be the major financial intermediaries, with one addition. In my mind, I lump the pension industry as an entire industry. Though many different operations work in it, it has developed as a separate function in most industries, as it is in our own. So I consider the pension industry as a separate collector of investment funds and disburser as to debt capital.

Q Amongst these people vying for the dollar of the consumer, what role does the insurance company play?

A Well, the insurance company trains—actually trains its sales personnel to acquire funds from the public with the savings concept. The insurance industry advertises their product as a medium for savings.

If I might add, every one of those industries that attempt to get savings money from the public sells the same concept, that is, "save for future contingencies," kind of thing, whether it is a nestegg type of thing, or [fol. 911] your son's education, or whatever. They sell the concept of saving money to achieve a given end, known or unknown yet. But each adds his own inducement as against the others. One would say, as we say—we cover risk: In the event you die before you complete your savings concept we will take care of what you had intended to do, such as educating your son, and so on.

Banks have their own added inducement. It might be convenience of many—well, demand deposit convenience, or personal loan convenience. But that is no different than inducement. It is a different kind of inducement, but it is an inducement to gather savings money.

The equities market adds an inducement that says: We hedge against inflation; nobody else can do that for you like we do.

The pension market says: Our added inducement is when you get old we can give you a life income that you don't exhaust, you know, and your boss pays for some of it.

But in essence, outside of the manner in which they present their added inducement, they are all really trying for the same thing. And, frankly, at every opportunity, through innuendo or blatantly, they will attack the other chap's added inducement.

Just–I guess it was last week or two weeks ago I had a Fidelity Bank here–well, I guess every bank that [fol. 912] is in the trust or estate business sends me their monthly mailers because at one time I was in charge of advanced underwriting, which deals heavily with pensions, and estate and business insurance, and so I still get these things. And two weeks ago, after I knew about this trial, I got as a normal mailing two pieces, one from Fidelity and one from–I guess it is National Newark & Essex Bank both bearing on the subject of: We do better than the insurance companies do as to these matters.

And the one from Fidelity was so misleading–and, oddly enough, their president is on our board of directors. So I called him and asked him whether he decided to start a war with himself, or what. This material was written by an outside firm and they buy it as a service for the year, and he never saw that one before it went out. And there wasn't much we could do except set up the mechanics so that the next time he gets to see them before they go out.

I have a copy of those things here. To read those, they actually say: Our trust department does better for you than the insurance company because we can give you personal service–innuendoing, of course, that the insurance company does not. But I don't want to go into much detail–

Q What is the truth of the matter?

A The insurance company, of course, has settlement [fol. 913] options. There are always some restrictions as to disbursing funds after death, as in a testamentary trust, through an insurance policy, because the options tend to have some restrictions, certainly. But we have over the years provided settlement options that allow for virtually every condition that you could write into a legal trust with a bank

as trustee. We can do the same thing through a policy. The law doesn't permit us to say we are trustees, but your settlement options can do the same thing.

And, of course, myself in the position of heading up advanced underwriting, I was well aware of the differences. There are conditions under which I would tell clients of the company to put their money at death in a testamentary trust in the bank, because of various personal considerations, like they wanted to make sure that certain private conditions were met. But in many, many instances it paid the estate owner, from an estate tax standpoint, which is what a lot of people aren't too familiar with, it is a highly specialized field–but from the estate tax standpoint it pays an awful lot of people not to put money into testamentary trusts, although I never see that written up in bank material.

Q But what typically does your salesmen say to a person who has a savings account?

A Well, if the objection–I don't think our salesmen [fol. 914] are trained to suggest that they should pull money out of–that the prospect pull money out of the savings account and put it in our savings account. But I think–they are definitely trained–and I was in charge of training, so I know–they are definitely trained to meet objection, such as: I am saving money now very well in the bank–or whatever–and I don't think I need you.

In such matters as education plans–that is, setting up funds to educate your child from the time that he is born–our agents are trained to go right into the house when a new child is born and try to sell the concept of starting an education fund, with the added inducement, of course, different from the bank's, that if he should die before his child reached his college age, we would finish the task for him. And the bank can't do that. Those kind of statements are actually made.

I think the difference lies in a very simple area. We try to train our people to determine what the purpose of the savings was. Are you starting to save money for retirement? Are you trying to save money for education, or what-have-you? What is the purpose of the savings? And if the chap says something that we feel we can do better with our added inducements, why, our agent is trained to start right in on it.

Q What about mutual funds?

[fol. 915] A You mean the insurance industry as opposed to mutual funds? Well, of course, they for years had some

advantage in the investment area because of inflation and their—in quotes—"hedge" against it, against inflation. So we did have a very strong competition. So strong, as a matter of fact, that, as you probably know, the Prudential has just incorporated a wholly-owned subsidiary—I think the first in the history of this State—of a company—I have forgotten the name, it is that new—but its function will be equity products marketing, whether they be mutual funds, or variable annuities, but equity product marketing, so we can defend ourselves against that very strong competitor, the equities market.

Q How about the pension industry?

A Well, there is very, very heavy competition in the pension industry. And, frankly, the government, the Federal Government, is one of the strongest competitors. Most people are not aware of that, but they are.

You see, pension funds have to be held together in large quantity over huge spans of time. And any banker knows what that means. If you can get to hold money for large spans of time, in large amounts, I think the holder of such funds is happy. Every financial intermediary knows that.

So the banks vie for the pension plan to be funded [fol. 916] in such a manner as the bank will be trustee. The equities people have their own funding system, and the funds shall be equity products. And the insurance companies, of course, say: We will insure that the worker get the benefit. And they take the same money, of course, and whether it is the bank or the equity field, the insurance company, or the labor union, the odd thing is they all put the money in virtually the same place, you see.

But what they do to go about getting it for themselves is something else again. There is very strong competition there.

Q Have you covered completely the getting of the money?

A Well, trusts, for instance, are a means of acquiring money from the public. There are different kinds of trusts, of course. There are intervivos, there are testamentary and there are pension trusts. All of those are means of getting money from the public to perform some service for the public. And as to the getting of money, I would say, including the Federal Government, and its savings bonds, and its—you know, its Social Security pension system has a huge reserve. Similarly, their Railroad Retirement Act and their Civil Service

retirement is a huge reserve. I have often wondered what they do with the reserve, but it is there, or supposed to be. [fol. 917] They are a heavy competitor, to the extent, you see, that you have to pay—that the employer and employee both have to pay money towards Social Security. To that extent they cannot save that money somewhere else, to the same given end.

What is worse, of course, is the attitude the public has that the Federal Government is taking care of them so well that they might not have to set up too much of a private pension plan. This is not the case. As a matter of fact there are—at last I understood it from the Federal Government—there are forty-two percent of the working force in the United States that does not have a permanent formal pension. And because of that the Federal Government is taking very strong steps to get into the pension field, through legislation, to force our industry, our collective—the financial intermediaries industry to go out and get some of that money and start building up more pensions. I think the banks will feel the pressure as well as all the others.

Q And are you familiar with the activities of the insurance companies in the Allentown-Bethlehem-Easton area?

A I think I am, yes. As a result of studies—we do them continuously.

Q We have just discussed how capital is procured. [fol. 918] How about the disbursing of that money, and the role that the insurance company plays with reference to the other financial institutions?

A There is as much competition in the disbursement of debt capital funds as there is in the acquisition of savings funds. Obviously, they are interrelated. If you acquire savings from the public, you have to do something with it. That's the whole point. And the better the deal, where you put your money, the more money it will attract, obviously.

As an example, if there are what we call sweeteners in the deal for a mortgage loan it will attract an awful lot of people. The better the deal, the more money comes to it. And obviously it is the function of investment people, no matter what financial intermediary they are employed by, it is their duty to get the greatest possible return commensurate with their level—what they consider to be their level of safety, of

capital. And a good deal will attract, obviously, everyone; the lesser deals attract fewer.

Q Did you perchance leave out one of the areas where money is gotten, finance companies?

A Yes. I don't know if I left it out, but finance companies to me are in the banking industry, that industry that collects money in that fashion.

[fol. 919] Q In what fashion?

A In what fashion do they collect the money?

Q Yes, how do they get the–

A Well, obviously, they don't have a means of collecting savings dollars. So what they do is they go to the other financial intermediaries that do collect savings dollars, like banks and insurance companies to sell their paper.

[fol. 920] Q How about corporate industry?

A I would imagine they do some of that, too. I would say about people like GMAC, CIT, they have been at one time virtually forced to the banks to get their money to discount their paper, but in recent years it has been my understanding now that all insurance companies of major size, including my own–and much to my surprise, by the way–buy commercial paper in a different form, they take notes. But it is still a 30-day, 60-day, 90-day, 120-day notes in huge quantities from people like CIT and GMAC, so even in that area you have competition in the intermediaries.

Q Now we are talking about disbursing funds at this time. They have gotten them from depositors and now they disburse them. Will you describe the role of the life insurance industry with respect to other people who disburse funds?

A Well, as I started to say earlier, there is competition for a good deal. But there are limited types of places you can put your money, obviously. You have constraints and perimeters put around this investment market by law and obviously financial intermediaries are going to be closely governed by law, you know, protector of the public good and all that. So it boils down to a very few places you can put your money. You can put it in personal loans–and by the way, insurance companies, I am sure, are one of the [fol. 921] biggest lenders of personal loans, particularly when money gets tight, as is now the case and has been for about a year, because people who have policies are well aware, obviously, of their growing cash values and when money gets tight, and therefore

the rates go up, why get $500 from a bank at a higher rate when the insurance company contract guarantees you a rate no greater than 5 per cent? So any time money gets tight and the price of money drifts up, we get slugged and we are always in a tough cash position ourselves when we see tight money times coming up. At one point we had to go borrow money ourselves. I think it doesn't speak very well for the insurance complex, but we had to go borrow money ourselves because the banks couldn't serve the needs of the public in that instance, their rates were driving too high, and so they came to their policies and we, in turn, had to go to the banks to get our money. It was a really–

Q It was unanticipated.

A Sure, it was unanticipated. When money gets tight it is hard to anticipate that. There are limited numbers of places you can put your money. Personal loans is one, realty mortgage loans is another, bonds.

Q How about direct placement with respect to bonds?

A Well, I think the insurance industry, life insurance [fol. 922] industry has about 50 per cent of the bond issue out. We do very, very much in the bond market.

Q This is a direct negotiation?

A Direct negotiation, yes. There is another place you can put your money, and that is in a C&I loan. That is a very, very interesting area because you can make more, of course, in the C&I area, within the law, than you can in other forms of investment. For instance, on personal loan investments we can only get 5 per cent, and the money market today is a little higher than that on good stuff.

C&I, every insurance company, every insurance company of good size that I know of–and we deal with each other, our planning groups always deal with each other–has their own C&I operation.

Q This is known as commercial and industrial?

A Commercial and industrial loans. But they don't have a separate department, they put it on their books as bonds, bonds. It is not bonds at all, but for administrative purposes and for filings they put it there.

Prudential was the first some years ago to form a separate department called C&I. It is fully staffed, including a senior vice president. As a matter of fact, it has many more people

in it, and therefore is more expensive than our bond operation, which is ten times its size by volume of invested money. But the C&I area, we decided some [fol. 923] years ago that it was a good way to serve the public and to gain something for ourselves, too, of course, if we went after the smaller business that was beginning to develop and needed the kind of capitalization—they couldn't float bonds, they were too small—and needed the kind of capitalization that a house only as big as we are could afford to give them without too much concern. So we formed a separate department. The minimum-size investment in the C&I is $75,000, and that may not be significant here but an insurance company with $23 billion of assets, a $75,000 loan costs too much for us, it costs us too much, yet we do it. We have almost 16 per cent, if I recall, 15.7 per cent of our C&I loans are in the category between $100,000 and $200,000. And the sole purpose is to help these, what we call smaller businesses, grow to the point where they are really worthwhile people for us. And of course we get pension business and several other things as time goes on.

What is interesting is we have to make a rule that when the C&I people, the C&I borrowers get to ten million we have to turn them over to the bond department. It got that thick, it got that large. So now we have a rule where we go down to $75,000 and up to ten million in the C&I department.

I would say that the majority of our loans in C&I are under $500,000 each. But it is significant that we [fol. 924] spend money to acquire customers who will grow with us, and we help them grow.

Q What are the other areas you would say that are seeking the same dollar that has been borrowed from someone and now is available?

A You mean outside of business enterprises where we put our money?

Q Yes.

A We talked a little bit about personal loans and the C&I.

Q Who else is seeking that same thing?

A Every intermediary, financial intermediary that collects money from the public has to put it somewhere, and therefore competes for the place to put it in. There are only four or five places you can put it in, as I said, C&I, bonds,

real estate, personal loans, then some odd things like Government treasuries and rolling stock and whatnot.

Q How about the stock market?

A Governor, if you will forgive me, that is an investment but not dead capital. That is equity. holdings, and we do put an awful lot of money in the market ourselves because we have available annuity accounts, pensions, and it has to be kept under the law and invested purely in common stock. But the bond market, for instance, is—you have very heavy competition among the very big banks and the very big [fol. 925] insurance companies and very big, not savings and loans, what is the other one? Well, in any case there is heavy competition in the intermediaries across lines by size for the bond market.

The other very interesting market that keeps fluctuating is the mortgage market. Now, in the mortgage market it is an odd phenomenon. I guess from the end of the war to now the FHA and the VA-type loans have made it an odd market. Everybody in the financial intermediary business feels obliged, if not forced to be obliged by the law, to keep money in the small mortgage market, obviously, the public needs it. And here again realty values keep rising wherever you go. Sometimes the local people can't handle it. But in any case, we do a tremendous smashing business in real estate and mortgages.

We have, well, let me put it this way, in the Eastern Home Office of Prudential we represent, if we were alone, the Eastern Home Office, it would be the fifth largest insurance company in the world.

Q The Eastern Home Office?

A Yes, just the Eastern Home Office.

Q And that is the one you are connected with?

A Right.

Q What area does it cover?

A The greater metropolitan area of New York, New Jersey, [fol. 926] Pennsylvania, Delaware, Maryland, Washington, D.C., that is the area. But in that small geographic area we have about 40 per cent of the company's business. And when you think in terms of $23 billion in assets you have a rough idea of how much money we have to invest and turn over every day.

Even with that, even with the need to dispose of money so heavily, we have only three resident mortgage managers, that

is people who live outside of our home office permanently and keep their eye open for good real estate mortgage investments, only three in the whole Eastern Home Office. We have one of those, who happens to be in Allentown. He lives in a place called Emmaus, or something like that.

Q Emmaus?

A I don't know how you pronounce it.

Q E-m-m-a-u-s.

A He lives there. I don't know where it is, I think it is a little south—

Q Near Allentown.

A Yes. But he has his office in Allentown, we keep him there, he lives there, and we have an awful lot of business that he has to watch over out there. So if the banks think they are not getting competition from us in small private residential mortgages, they are wrong.

THE COURT: Whenever you want to break.

[fol. 927] MR. MEYNER: I think we can stand a break.

THE COURT: We will continue at two o'clock.

(Noon recess.)

[fol. 928] AFTERNOON SESSION

THE COURT: It has been related to me that some of the information that will be disclosed by this witness is of a confidential nature and therefore I am going to request that all persons other than counsel leave the room. You may remain outside or any place where you will be comfortable, and just as soon as the ban is lifted you will have an opportunity to return and be seated in the courtroom, if you wish.

EMANUAL GNAT, resumed, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (Continued)

BY MR. MEYNER:

Q I think you have touched upon the life insurance and banking industries having a common objective with respect to savings. Would you give us some specific illustrations as to how this is done?

A Well, we, of course, acquire the funds from the public through agents that we have in the field. These are sales people working on a commission, but employed by the company, and they are trained from the moment that they enter the business. They would so be trained in any insurance company, obviously, because that is the business, but they get training in selling life insurance where the circumstances warrant, [fol. 929] where there are certain needs, as not only a risk benefit but also a savings medium. I have, if you want, some of the training material as it is today constituted in my company, which relates to life insurance as a savings medium. I also have similar material from the Life Underwriters Training Council, which is an industry-wide organization that does research for our industry, what they say about life insurance as a savings device.

Q Rather than encumber the record would you just tell us where it is, in what publication and a short paragraph or a short sentence that describes it? I am sure it will be available to counsel if he wants to look at it on cross-examination.

A The Life Underwriters Training Council ran a consumer survey of some two years' length, I believe, to find out what the buyer buys for, and in a publication, Life Insurance in Focus, Volume 2, "The impact of investing savings and inflation upon life insurance attitudes." This was copyrighted 1961 by the Life Insurance Agency Management Association and the Life Underwriters Training Council, and just as an example of the kind of thing that is in there—in other words, this is part of their survey. "In other words, is saving component of life insurance something that is salient or does it tend to be forgotten? Among all household heads fifty percent mentioned life insurance as one of the ways in which [fol. 930] they were savings, which represented sixty-five percent of those who owned privately-purchased life insurance."

We have in our industry a degree that they call a C.L.U., Charter Life Underwriter, acquired at the American College of Life Underwriters in Bryn Mawr, Pennsylvania.

Q That is a professional degree?

A A professional degree.

Q Awarded as a result of how much training?

A Five years of study. At the end of each year you take something very similar to a Bar examination, and you pass or

fail that year's study, but you must complete all five years to be given a degree. The major in Part 1 of that, the first year, you have your basic—what they call basic insurance information and two of the textbooks that we consider Bibles in that CLU program are "Life Insurance," by S. S. Hebner of the University of Pennsylvania and Kenneth Black of the Georgia State College of Business Administration, published by Appleton, Century, Croft, Inc. There is a statement under subject functions of endowment insurance, "One of the types of life insurance commonly used as an incentive to save"—it is on Page 25. "The argument most generally advanced in favor of endowment is that it constitutes a sure method of systematic savings, in that it provides for laying away of a moderate sum each year with a view to having all the accumulations returned [fol. 931.] in one sum at the end of a fixed period."

In the other publication on that CLU text material, a book called "Life Insurance," by John H. McGee—I am not going to go through his pedigree—this is published by Richard Irwin, Inc., Page 7, "Means for Saving: That life insurance affords means for saving is without question. For those who cannot hold themselves to a systematic savings program life insurance as an agency for saving may fulfill a purpose."

Then I have a series of articles from our own Prudential training program, all of which bear on how one should handle the object of saving money through other means, and I will just take one.

Q Give us one or two that are an illustration.

A This is from our booklet, "Career Agent Training Plan". We have a series of several books. This one happens to be entitled "Fundamentals of Need Selling." All of these booklets in this program are administered in the first year that the agent is under contract, so these are the first things he comes across. On Page 164 of that book it says, "There is a popular misconception of life insurance, too many people still believe they save money to buy life insurance when as a matter of fact they should buy life insurance in order to save money." [fol. 932] This is a booklet called "Young Man's Market", also in the basic training program of Prudential. These are the latest editions of the training program.

On page 7: "In talking with young men," this is advice to the agents, "In talking with young men, stress the savings aspect of your plan more than the protection it provides. As in the preceding paragraph, profit as well as savings are of greater interest to young men than insurance protection."

And all the rest of these have similar such statements. These are Prudential training programs and the industry's professional training programs.

Q How about other companies, do they have similar material?

A There is to my knowledge no major company in the insurance industry that does not have material that says virtually the same thing. I am very well acquainted with Metropolitan's program because their head of advance underwriting and training is a friend of mine. We were agents together at New York Life.

Similarly with John Hancock and The Equitable, I am fairly well acquainted. Their books could be gotten, I am sure, from any of their field agents if you wanted to pursue them.

As to training of men, I think there is [fol. 933] sufficient evidence to indicate that they are actually formally trained in means of acquiring life insurance sales through savings concept.

In advertising I brought along some copy. These are brochures and pamphlets currently in use, which are handed to the prospect. This is what the public sees. And I have here some very typical types. Most of our pieces are intended to be motivational and also leave some space to do some mathematic work in the event you have the opportunity to sell the chap you are showing it to, and you can go right down into your sales work.

The front of this says: "Two means a husband and wife. Reciprocal Savings Plan." Two means savings and protection. We do in the industry an awful lot of savings and protection type of motivation, which, as I said before, is our added inducement. This is now for Kehoe Pension Plans for professional people. A relatively new field.

Q That is a type of trust work, isn't it?

A The Kehoe Pension is a trust animal if it is in the bank, yes. Helps you set up a systematic savings for retirement.

"Money, Money isn't everything, the question is what is the best way to accumulate the money you need. There are five basic musts for successfully accumulating money. Any sum plan must–" and then it enumerates these [fol. 934] "and indicates a Prudential Endowment Plan can help make it come true." This is the type of material, though, that is actually handed to the public. This is one entitled–

THE COURT: The point of this, I assume, is to illustrate that life insurance companies are aggressively engaged and seeking the dollars that might otherwise go into a bank?

MR. MEYNER: That is correct, your Honor.

THE COURT: I don't think we need to belabor that.

MR. MEYNER: Well, then, I will move into the specifics as soon as I can in pointing out how they regard the geographical area.

THE COURT: All right.

Q In your studies, in planning, do you make an effort to find out about the assets of individuals and where their money is invested?

A Yes. It is part of our market research function to know how the public use the financial intermediaries vying for their money.

Q What do you have to say with respect to the relative importance of the major savings media?

A I have here a compilation of my own. Most of what I have I do myself, with my staff. These data are taken from the Factbook of Mutual Savings Banks, 1968, Tables 51 and [fol. 935] 52. I list here, in order of size, the various savings media and their relative importance.

Q For what year?

A That is for the year 1967, the factbook is dated the 1968 Factbook.

Q Yes.

A Corporate stocks and bonds. That is what I call the equity market. It currently stands at $637 billion, commercial banks, savings accounts $146 billion, savings and loan association savings shares $123 billion, U.S. Government, that would be savings bonds, insurance and pensions, $123 billion, private insurance reserves $121 billion, private pension reserves $116 billion, mutual savings banks, savings deposits $51 billion, credit unions $11 billion, and I have left out of this a total "other things" like demand deposits, Federal and

state and municipal issues and such. The purpose I wanted to achieve here was relating to our benefit the relative importance of things like commercial banks, savings accounts, which is $146 billion, and the private research reserves $121 billion.

Q How about relative importance of major sources of mortgage capital?

[fol. 935] A Here again, from the Factbook of Mutual Savings Banks of 1968 Edition, Table 63, the relative importance of sources of, major sources of mortgage capital for the year [fol. 936] 1967, savings and loan associations, $122 billion, life insurance companies $68 billion, commercial banks, $58 billion, mutual savings banks, $50 billion and the U.S. Government $17 billion. And I have left those out that private citizens held in, non-financial corporation held.

Q How about the relevant importance of the major corporate bondholders?

A Well, there is no current data. There was a study made, a well-known study made and published in 1965, a book called, "Flow of Capital Funds in the Post-War Economy," put out by the National Bureau of Economic Research, by a fellow economist named Goldsmith, and in Table 72 is the latest work on that subject. This publication came out in 1965 and relates to the year 1968. The latest worthwhile evidence that we have. Life insurance companies had 44 billion, which by the way is half of the total bond market: non-insured pension plans had 12 billion, Government and insurance pension plans had 5 billion, commercial banks had 4 billion and mutual savings banks had 3 billion. Those last two figures are rounded, roughly. So in relative importance I would say that the insurance companies, life insurance companies, are in heavy competition in both lending and acquiring of savings dollars.

Q Mr. Gnat, in order to get on would you tell us how you treat this area and how you define it and where you [fol. 937] have your offices.

A You mean in this area?

Q What is your area that you would define?

A Obviously we have to put our operations where the population is and we have our own system of determining where our agencies shall be on market research system, and it

happens that out in the AB area—and when I say AB area I am talking about the SMSA AB&E area, with some modification in my organization, we accept that as a one-unit enterprise. You have the three counties in SMSA, Lehigh, Northampton and Warren in New Jersey, and for our business purposes we do extend our boundaries in that common area down into a little corner, I guess that would be the northeastern corner of Bucks County and a little piece across the top of, what is that, Hunterdon County, the next county over?

Q Yes.

A And we go north above the Government SMSA area for a little bit in another county.

Q Did you by any count—do you have a map with you that outlines your area?

A Yes, I do. I was just going to look what that other county was. The point I am trying to make is we have our own way of arriving at where to put our people and we come out pretty much with the SMSA area. Oh, yes, that is, what [fol. 938] is that, Monroe County? We go up a little piece in Monroe County.

* * * *

[fol. 939] Q That is the Standard Metropolitan Statistical Area set up by the Bureau of Census?

A Right, by their criteria of integration and population end location. Now, through our own studies we are always putting our agencies where our salesmen are where they feel they can do the most good for us. We have five sales operations that operate in this area with some 400 sales people and their territories, based on other considerations, such as our own business considerations, the lines you see here are our own operations in that area. But you can see in the greatest majority of the eastern we have almost duplicated, for our purposes, for the way we do business, [fol. 940] overlaid the Government's view.

By the way, this particular piece is a result of a particular manager knowing some people up here that he hired, and so they—

Q That is the northern part of the chart?

A Right. So they gave this territory to a particular manager, so we had three people or four, I am not sure of the number, selling in here.

Q How many people do you have in this area?

A We have in the vicinity—what shall I do with this?

Q I will take it.

A We have 423 total employees in the AB&E area.

Q How many did you say?

A 423 employess in the ABE area, of which—

Q Is that the area as you outlined it?

A Those are our employees there, that area as indicated there. Something in the order of 100 of them are salespeople and the rest are clerical, loan people. That is, investment people, and we have a group sales office there, also, which happens to be indicative of our feeling of the potential there. We only have in the whole of the Eastern Home Office only five group offices locally located, and yet we represent about 50 per cent of Prudential's group business, which is in the order of $3 billion.

Q Where is the resident mortgage manager?

[fol. 941] A The resident mortgage manager has an office in Allentown. He lives, as I said earlier, in a town called E-m-m-a-u-s, or something.

Q Does he cover the area you outlined?

A He covers a greater area than that, but we break down the mortgages by area and I have naturally, in my work, I have knowledge of how much of our mortgage money is put in the particular area and what for.

Q Do these agents who—strike that. What are the duties of this mortgage manager?

A Well, he services the mortgage business we have for us and keeps in contact with the people and also has an eye to any mortgage deals that Prudential happens to be interested in, of the nature that Prudential is interested in at the time.

Q Do these agents have licenses? Are they required to be licensed?

A Our salesmen are required to be licensed, yes.

Q And how do they handle the State licensing system?

A Well, an agent takes an examination in his state of residence to get a license there, and if that state has an agreement with other states, those other states can issue on his request and based on his having passed.

Q Well, would you have agents licensed in both [fol. 942] states?

A Sure.

Q How many?

A We have about one-third of our sales force, the ABE total sales force is licensed in both states, New Jersey and Pennsylvania; that is about 70 salesmen.

[fol. 943] Q Now, an agent is assigned a territory, or isn't he?

A Certain of our agents. Our district agents—we call them debit agents—have the responsibility of collecting premiums on that type of policy that was sold there before, in a given physical geographic area.

Q That's the type of policy where they collect on an installment basis?

A Right.

Q Are most of their sales in that area where they collect?

A No, they are permitted to sell—all of our salesmen are permitted to sell anywhere that they are licensed, new business, permitted to sell new business. I think we once had a tally that ran about fifty percent of sales—what they call off-debit—that means out of the area that he was responsible for.

Q How about your group insurance and the people served in that area?

A We have a group insurance office in Allentown. Well, see, a group function is two-fold. One is to sell new group cases and the other is to service what is in force, that is, where there are claims, and so on. And for servicing, all of the sales made prior in twenty-four Counties is serviced out of the Allentown office. And in the Allentown [fol. 944] office we sell new business. In the new business area, approximately fifty percent of the "in-force" business in Allentown is located—yes, is located in the ABE area. Even though it is responsible for twenty-four Counties, fifty percent of its business is sold and in force in the ABE area.

Q Would you have some reckoning of how much business is done by Prudential in the industry in the standard Metropolitan statistical area?

A I do. Well, it is natural that we have to keep a very close track of our competitors. I am, of course,—in my capacity, my division is the keeper of the Prudential Eastern

home office's official records. And starting with that, in the ABE area, we have reserves behind policies totalling $99,000,000.

The endowment reserve, that is, those types of policies that are sold purely for savings–endowment reserve is thirteen million. This is just Prudential.

In the Easton-Phillipsburg area alone we have reserves behind Prudential insurance of $26,000,000.

Now, we know that we are a percentage of the total market out there. We get this out of the Life Insurance Fact Book, in combination with our own internal information. And in the Pennsylvania and New Jersey area those two States, we run about 21.7 percent of the total market.

[fol. 945] Now, if I extrapolate, knowing what we have there, and know that we have 21.7 percent of the market there, then I can determine that the total industry reserves in that area are $456 million dollars.

Q That is for all insurance companies?

A That is all life insurance companies behind life insurance policies, yes.

THE COURT: In that area?

THE WITNESS: In the ABE statistical area as Prudential uses it, with those little overlaps.

A (Continuing) That would mean, extrapolated, that the insurance industry endowment policy reserves, which are, as I said, pure savings policies virtually–the reserves in the ABE area are sixty million.

It would also mean that extrapolated in the Easton–Phillipsburg area the industry should have a reserve of about $120 million.

Q That is in addition to this $456 million dollars?

A No, the Easton-Phillipsburg area–that's a piece of the $460 million. There are 211 Prudential salesmen in the ABE area. And based on information received from the State of Pennsylvania Insurance Commissioner's Office, they have outstanding in the order of 4,200 licenses to sell life insurance in the ABE area. But from my own experience as a field manager, I can say that just about [fol. 946] one-third of these are active, that is, people who actually do some business during the year. That would mean something in the order of 1,500 people in that area sell some kind of life insurance during the course of the year.

And I might add, just as an added piece, you know, in the trust area—that's personal trusts, estates, and what-not—I used to keep a running tabulation of the amount of large sales that we made by areas to know what kind of affluence was located there for our estate work. And going back to that, from the year 1964 to 1966, when I was in charge of that type of operation, we averaged about twenty-seven sales a year of $100,000 per sale or more in the ABE area. That's something in the order of thirty people who just by one purchase alone would have created an estate. So there is obviously trust business out there.

Q Now, the total reserves in that ABE area, the three communities, is 456 million?

A That is extrapolated out of our piece of the business.

Q All right. How about endowment reserves?

A The total endowment reserve in the ABE area?

Q Yes.

A Sixty million.

Q That is in addition to the 456 million?

A No, sir; that is a piece of it.

[fol. 947] Q So, in other words, there is about 456 million in life insurance by all companies, you estimate, in that area?

A Right.

Q How about the investment aspect of this area?

A Well, using the same kind of system—that is, knowing what Prudential does as a fact, and in extrapolating from that, knowing what our piece of the pie is, in the ABE area, as to mortgage loans, we have $11 million. In the Pennsylvania-New Jersey area we represent about 15.8 percent of the total mortgage market. That would indicate, if we extrapolate, that the insurance industry has seventy million dollars of mortgage loans in the ABE area.

Q How about bonds and C & I loans?

A Well, let me call them business loans. Is that all right? The business loans that Prudential has in the ABE area total thirty-six million dollars. As a percentage of the industry, we represent something like 14.1 percent. That, by the way, is Prudential's percentage of the United States industry, 14.1. That would mean, extrapolated, that business loans out of the insurance industry in that ABE area total $255 million.

In the C & I loans what is interesting, as I was saying earlier, about these small C & I loans for a big company like us, about 15.7 percent of our C & I loans get into the [fol. 948] category of $100,000 to $200,000. For us it is very expensive for us to do that kind of business. But we obviously feel it is well worth it, and probably because it is easy for us to get into that market.

Here it is, last year, 1967, of the total of 898 C & I loans, 141 of them were between $100,000 and $200,000. And I think that is rather significant.

And when you add together the business loans and the C & I Loans, Prudential has in the ABE area $47 million. And the industry, therefore, should have something in the order of $325 million invested in the ABE area.

Q Are you familiar with that area from the standpoint of growth and traffic patterns?

A Well, to the extent that my organization is responsible for marketing research, and to the extent that we do these kinds of surveys in all of our territories constantly—as a matter of fact, we put out something like two such surveys on markets, in different areas, every week. And to the extent that I have that information and have worked on it, yes, I am. Besides that, though, from 1964 to 1966, when I was in charge of training, I frequented that area something like four or five times a year.

* * * *

[fol. 957] However, here is what is interesting about this as related to the particular case. Allentown and Bethlehem are on a contiguous border. They have a common border, so it means if you ask a fellow who lives on the periphery of Bethlehem where he works and he says "here" he could just as well mean Allentown as Bethlehem even though they recorded him working in a little township adjacent to Bethlehem. It wouldn't be significant to this case except that Allentown and Bethlehem happen to be in two different Counties, so that where one of those workers is misplaced, shall we say, in the data in placing him correctly, you might find he just crossed the State line. The same would hold true for Easton-Phillipsburg having the common border. If you

corrected the data, if you could, you might find that he crossed the State line into Easton, or vice versa, so they admitted that there was an error. They don't know the magnitude of its worth. They did not for some reason—as a matter of fact they say that they didn't correct it in New Jersey and urban Pennsylvania areas because it was so clearly defined that the fellow must have meant the city he was next to, and I am assuming by that they mean Philadephia, which is made up of many small municipalities and Newark, but when you apply it to Allentown, Bethlehem and Phillipsburg-Easton the difference is all-important, because they might move over County lines, so if I were asked in my [fol. 958] capacity at the Prudential to do a study for the Prudential based upon this material and the question in the study would be about the flow of workers across County lines I would have to say that his information is not valid for that purpose—

* * * *

CROSS–EXAMINATION

BY MR. WEINBAUM:

* * * *

[fol. 961] Q What objectives, or what reasons might a customer give which a Prudential salesman might not feel would be consistent with encouraging of a person to start a life insurance program of some sort?

A Well, of course if the prospect says he is saving money in a bank to go on a vacation next summer, there is not much you can do about that; short-term kind of savings. But you see in my own experience, because I sold insurance for, oh, ten years, my own experience when you ask a man why he saves money in a bank he kind of generalizes about a thing called financial security and the generally-accepted need to put some money away somewhere. And this is where our agent is pretty much adept at moving into defining with him what his real motives are and which of those we can serve better.

Q But generally if it is some sort of a short-term reason he has for keeping his money in a bank, this might be inconsistent?

[fol. 962] A I think the question, though is why does he save money, not why does he keep it in a bank. And we are talking about selling insurance for savings purposes, and when you ask a chap why he saves money, it is a different story than why does he have money in a bank. We don't ask him why he does have money in the bank.

* * * *

[fol. 972] THE COURT: Mr. Gnat, there was one question I had in mind, before you leave. Not knowing how regional offices of The Prudential function, the question is this: Do you maintain bank deposits within this area?

THE WITNESS: You mean Allentown-Bethlehem-Easton?

THE COURT: Yes.

THE WITNESS: Yes, sir.

THE COURT: So that part of the money that you seek there finds its way into banks. Would those be demand deposits?

THE WITNESS: Yes, they would.

* * * *

[fol. 974] LOUIS HAJDU, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live, Mr. Hajdu?

A In Alpha, New Jersey.

Q And what is your business?

A A general contractor, specializing in commercial, industrial and institutional work.

Q What is the yearly volume of your business?

[fol. 975] A $4 million approximately.

Q And what would a statement show of your assets and liabilities?

A A net worth of possibly three-quarter million dollars.

[fol. 977] We got contracts this week on one other building and we are now negotiating for two more additional buildings for Hoffmann-LaRoche. We do all of the New Jersey Bell Telephone work in the western part of the state. We are doing one at Hackettstown at the time. We have done one at Warren Glen, New Jersey. We built all of the dial buildings for West Jersey Telephone Company which has a home office in Belvidere, New Jersey. We built the dialing building for them at Oxford, New Jersey, Blairstown, New Jersey, Great Meadows, New Jersey and Belvidere.

Q How much, if any, school construction work have you done?

A School construction, at the present time we are building a school in Hackettstown. We built two schools in Belvidere, three in Washington, New Jersey, one in White Township, New Jersey, one in Johnsonburg. We have built a school in Holland Township. We built one in Edwardtown, which is near Flemington. We are building the new Warren Vocational School in Warren County.

Q And some years ago in Phillipsburg did you do another school? This was a private school.

A Yes. We built the large Catholic high school covering all of Warren County.

Q What would you say about the growth of this 40-mile radius that you speak of?

[fol. 978] A The growth of this 40-mile radius seems to be hinged to the fact that we are getting Route 80 and Route 78 through to our area at the present time. It is mostly pretty well done, and the growth is in all of the outlying areas. Belvidere is going to have tremendous growth with Hoffman-LaRoche coming in. Hackettstown has almost tripled in size in the past few years. Washington has started. Phillipsburg itself seems—now seems to be very, very quiet. Lopatcong Township has doubled if not tripled in the past ten years. Pohatcong Township has a tremendous growth gain. Alpha is just about done because they have not any place else to grow. They have developed practically to the borough limits, and again in Pennsylvania we have tremendous growth outside of the City of Easton, because the City of Easton is the same as the Town of Phillipsburg. They are stagnant. They have gone through the process and there has to be either urban renewal or complete demolition to start anew.

Q How about the activity of the Pennsylvania Development Corporation?

A The Pennsylvania Development Corporation is very, very active in eastern Pennsylvania. The group that has an office in the City of Easton—I mentioned previously we had built two factories in Forks Township. The S. I. Handling Systems which was originally from Phillipsburg and the [fol. 979] Filette, Inc. which originally was in Phillipsburg, both of these were lured to Easton or Pennsylvania through the PIDA which feeds it, and the interest rates, possibly averaging out to somewhere around 3 or 3-1/2 percent with the state commitment was a little shy of 2 per cent, and the local commitment added to it.

Q In other words, state funds go into the building of these operations.

A To 40 per cent of the total cost.

Q And then the plant is induced to come into the area.

A The plant is induced because 40 per cent of the total cost comes from the state, I think at 2-1/4 per cent, if I'm not mistaken, and local money then goes in. It's somewhere around the 5 per cent range. It averages out just a little shy of 4 per cent. Someone can move into the area and get a factory a little shy of 4 per cent. The factory itself is built for them at absolutely no cost to them. They move into this thing and pay it off in 20 years and they have a factory.

Q Why do you say you do a business in a 40-mile radius?

A We are what you would call a union shop. Now a union shop, the three major trades, laborers, masons and carpenters, and you have steelworkers in other trades, [fol. 980] electricians, et cetera, but the three major trades in Warren and Hunterdon County are covered by the three major trades through one union. Northampton and Monroe Counties are covered again with a different local, except we are allowed free movement of all trades between the two areas, so we can then take any men we have, and we have a nucleus of possibly 50-60 or 70 people we can move freely in this radius.

Q Does that include—what counties?

A That would include as we previously stated Northampton, the eastern end of Lehigh, the south end of Monroe, the upper end of Bucks, Warren and Hunterdon counties.

Q From an economy standpoint, how far do you think you can go?

A From an economy standpoint again I think about 50-mile radius would just about stop our operations at the present time, but we are thinking of expanding this operation through more help, if we can get some financing, better financing than we can now get, and many other things.

Q Are you familiar with the business activity of some of your suppliers?

A Yes, very familiar. I keep in very close touch on my operations.

Q And what about their area of activity, would you describe some of them and their area of activity?

[fol. 981] A Yes. Most of our suppliers—yearly we go through our complete operation. We check the volume we do with certain suppliers, major suppliers and/or subcontractors, and going through this complete process we find that about 80 per cent of our suppliers and subcontractors are in what we call this operation area with the majority of them coming from Bethlehem and Allentown.

Q And when you talk about suppliers, what are you talking about, sand or whatever?

A Well as an example, we'll take building blocks. We get this from Bethlehem Building Block and hardware we either get from H.H. Bennett Hardware in Easton or we get from Shelly in Allentown.

Q Do you do your own concrete work?

A We do our own concrete work. We buy the concrete itself from Steckel Concrete in Phillipsburg, Houdi Construction Material Company in Hackettstown, Lewis Concrete Company in Flemington and Cascioli Concrete Company in Bethlehem Township—I think they are.

Q How about other contractors, what is their area of activity?

A Contractors that do any business at all in the area have practically the same operation area as I have. We have a few of these, Bruce Construction Company. They are mostly in home building, and I think they do about 200 homes a [fol. 982] year in the same operational area I am in.

Q 200 homes would be a volume of about what?

A $2 million—$3 million.

Q What else?

A We have Steckel Concrete Company as I mentioned previously who supply our concrete. He covers the complete Lehigh Valley through two plants. He has a plant in Top Lake, Pennsylvania, just outside of Allentown and a plant in Phillipsburg, but he covers this area again.

Q What would his volume be?

A His volume would be close to a million dollars a year.

Q What other contractors?

A Mueller Roofing Company. They again do work in the same area. They very seldom stray out of this area because again there are union problems of men moving back and forth, banking and everything else connected with the complete construction business.

Q What volume would you say they have?

A Mueller Roofing if projected for the year at $2 million.

Q How about electrical work?

A Electrical contractors. We have Lyons Electric Company from Alpha, New Jersey. Again all these people I name are in major construction. They are not building just a few homes.

Q With the exception of Bruce.

[fol. 983] A Well again Bruce is the only major home builder in the area.

We have Lyons Electric Company from Alpha, New Jersey, Easton Electric Construction. They are from Wind Gap, Pennsylvania. Nortland-Dean Company—incidentally, Nortland-Dean has an office near Newark and an office in Easton, and they purposely opened the Easton office to cover what we call our Lehigh Valley area.

Q Have you discussed some of the credit means with these people?

A Yes. I'm in a rather peculiar position being one of the major contractors. They have got to come to me for the work and we pay them. We have not missed a bill since I have been in business even though we had to borrow we paid our bills, and being a director at a bank, so I get this from both sides, and I know—know very closely what shape they are in, the money they need and why they need it and the complete picture.

Q You are a director of the Phillipsburg National Bank & Trust Company?

A Yes I am.
Q Since when?
A Since 1964, somewhere in that range.
Q And what about your borrowing situation?
A Well yearly after closing out our fiscal year, which [fol. 984] ends March 31st, we request a line of credit to the maximum. We usually never state the amount. We want it to the maximum, which is very important to us. We build school work for the State of New Jersey, which now calls for us to be pre-qualified. They give us credits for all of our assets, quick assets now we are talking about. They give us 80 per cent credit for what we get as a line of credit. We now are certified by the State of New Jersey for two and a half million dollars and we are finding that in the high school range we just can't get this two and a half million dollars to cover us. We couldn't bid a big high school, the Hunterdon Central School in Flemington here last month because it was slated to go about 3.4 million, so we are trying to get our line of credit established at a higher rate so we can go back to the state and get somewhere around three and a half to four million dollar rating.
Q Do the other people you have been talking about have similar problems with respect to a line of credit?
A Each one of these contractors again has the same problem as we have because they are in the same business.
Q And this is true if you go into highways or bridges or any other activity, isn't it?
A All State and Federal construction now calls for pre-qualification, so you have the same problem consistently. [fol. 985] Q Does your corporation have a line of credit from the Phillipsburg National Bank?
A Yes we do.
Q What is that?
A To the limit right now. I think it is 115,000.
Q How much of that have you used?
A All of it. This month we were in for about 20,000. Last month we were in—I think we were in for the limit. My accountants handle this end. We are in a peculiar position. We must pay all suppliers and subcontractors from the 10th to the 15th and we don't get our money until the 20th, so

invariably every month we are hoping that our checks come in in time to pay out. If they don't we're running to the bank to pay our bills.

Q It is a short-term credit proposition?

A Yes.

Q And it is also a necessity to have this line of credit in order to bid on public jobs?

A Yes it is. It is very important, and we need this line to keep our creditors from pressing us for two or three weeks monthly.

Q You were on the Board at the time the merger agreement was made?

A Yes I was.

[fol. 986] Q Why did you vote for the merger?

A Again, at the time that the agreement for the merger was made I think I was somewhere around forty-five years old, forty-four years old, and if you recall, as you recall, remember we had four board members close to eighty years old, we had a couple just about at seventy, you were then the next youngest to me, and I was down to forty-four, and I sat there and I thought, Gee, can banking be so primitive? I thought there must be some way, something should be done here and now. In the past few years, I think, I brought fresh ideas into the board, into the bank, to develop a better program, expansion, in the whole picture.

Q Well, why did you vote for the merger?

A I voted for the merger because Phillipsburg National cannot handle the business that is available locally, and again I see problems, management in Phillipsburg, Joe Curry was seventy-one years old at the time, and you can't afford to get people in, pay them the going rate. Again, if we pay a laborer $10,000 a year I think how in the world can you get a bank president for $12,000 to $14,000 a year? Which is about what we are; Charlie Rittenhouse is at $13,000, Joe Varga is somewhere around $10,000, somewheres in that range. So this is one of the reasons.

Another reason is that I think that by merging we [fol. 987] can get a line of credit somewheres around a quarter of a million dollar range, which would help most of the businessmen in our area.

Q And other advantages of a merger?

A Well, there are very many other advantages. For one thing, in our business we see that we must automate or we are going to start sliding backward. I say automate, going into computer operations, cost control. Our bank at the present time has no computer operations whatsoever and the paper work is just running away with the bank. So this is one field where you will at least be able to expend some monies and put people onto the problem of computerizing your operation.

Your trust department is rather sad, possibly bring in a trust office for the trust department and develop this. It will take a few years if you do merge and you have gotten this.

Q Well, do you know of any trust business that is available?

A Yes, quite a few friends of mine have trust business available. I have trust business available excepting at this particular time I can't see our bank handling my trust business or any friends of mine, because you just haven't got a trust department for handling this properly.

Q Why couldn't each bank go out and get a trust [fol. 988] officer?

A Your assets are so small that you just can't afford a trust officer.

Q How about capitalization?

A I think since I have been on the board at the beginning, I have been trying to get us to broaden our stockholders' base and along with broadening our stockholder base expand our capitalization because we are very much capitalized, as well as the Second National. Should we merge I think we will be better able then to offer new stock, expand our stockholder field and just get a real operation going.

MR. MEYNER: Cross-examine.

CROSS–EXAMINATION

BY MR. WEINBAUM:

* * * *

[fol. 989] Q Have you tried to find a president for this bank.

A Almost weekly we discuss this and where we could find one.

Q Are you aware of the fact that Mr. Curry has indicated that no efforts have been made to find a president?

A As a president—how would you make an effort to find a president? We are looking for male people we can either develop or hire for whatever purpose we can hire them for.

* * * *

[fol. 991] Q Has the Phillipsburg National Bank made any effort to raise additional capital?

A I really don't think we have because, again, we had a board comprised of these older men and I know in the past three years I have done an awful lot of talking and I haven't succeeded, but I think we are slowly developing to a point where I feel that the board is more receptive to expanding.

* * * *

[fol. 993] Q What are your total borrowing needs over the period of a year, Mr Hajdu?

A About a quarter of a million dollars would fill our needs very nicely.

Q And do you do all of your business with the Phillipsburg National Bank?

A No. At the present time we are also doing business with the Phillipsburg Trust Company.

Q And are all of your credit needs for business purposes of the type that you have described in regard to Mr. Meyner's questions to you, that is, the short-term type of loan?

A How is this again?

Q Are essentially most of your business borrowings of the short-term turnover type of credit?

A Yes.

Q To pay off subcontractors and your employees?

A Yes.

Q Have you had occasion to borrow money in excess [fol. 994] of $115,000 limit at the Phillipsburg National?

A We have had occasion, we knew we couldn't get it, so we have to sort of bypass and don't pay the subs for a couple of weeks, two or three weeks later.

Q You don't consider the banks in Easton as an alternative place for you to turn to for credit?

A We would have to set up a complete operation with the Easton bank if we did this.

Q You mean maintain a compensating balance of some sort?

A Yes.

Q So you have never endeavored to do business in Easton?

A No.

Q Mr. Hajdu, as a member of the board of directors did you give any consideration to other ways of solving these socalled difficulties at Phillipsburg National Bank somewhere short of a merger?

A As a member or as a board group?

Q As a member of the board, as a member of the board.

A Individually I have given it quite a bit of consideration, but again I can't do much alone.

Q Did the board give any consideration to contacting any other banks in the Warren County area with respect to the prospects of merging with one of those banks, that is, [fol. 995] banks outside of Phillipsburg?

A No, we haven't up until now.

* * * *

[fol. 998] REDIRECT EXAMINATION

BY MR. MEYNER:

Q There was some mention of time to get through this area. Do you have calculations on how much time it takes you to get to these various towns that you mentioned?

A Governor, I think of all towns in our area in terms of minutes. I have job meetings in every one of these towns from time to time. Hackettstown is twenty-seven minutes from me. And I do these things purposely so I can make a meeting, and I know how long it will take me to get there. Flemington I can make in twenty-six minutes. Belvidere is thirteen minutes from my office. Washington is eleven and a half minutes from my office. Forks Township is thirteen minutes from my office. Each one of these I peg in minutes, which allows me to make a meeting, and I don't have to leave too soon and waste an awful lot of time.

[fol. 999] Q How about Allentown?

A Allentown is twenty-one minutes from the bridge, give me four minutes to get to the bridge, twenty-five minutes.

Q And how about Bethlehem?

A Bethlehem I can make in just about eighteen minutes.

Q And how about Nazareth?

A Nazareth is sixteen minutes, because you have got to go through a little rough road to get to it.

Q How about Riegelsville, Pennsylvania?

A Riegelsville, Pennsylvania, is only six minutes from me.

Q Milford?

A Milford, New Jersey, is fourteen minutes.

* * * *

THOMAS FRANCIS McGINLEY, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live, Mr. McGinley?

A In Phillipsburg, New Jersey.

Q Whereabouts?

A 175 Prospect Street

Q And what is your business?

A We are in the textile manufacturing business. We [fol. 1000] weave broad fabrics in one department—we have three departments. We have a ribbon manufacturing department, and a retail sales department.

Q Will you give us your educational and business background?

A I graduated from Easton High School in 1942. I had my first year of college at Columbia University. Then I enlisted in the Air Force. When I got out, I finished the last three years at Lafayette College, graduated in February of 1949.

Q And you have been in business ever since?

A Yes.

Q This business is a corporate business?

A It is a corporate business started by my father in 1919.

Q And your father is since deceased?

A Yes.

Q When did he pass on?

A 1959.

Q And who besides you are considered the executives of this corporation?

A My brother, myself, and we have a corporate secretary.

Q But you are the two principals of the corporation's endeavor?

A That is correct.

[fol. 1001] Q What would you say a statement would show of the value of your business, that is, liabilities and capital?

A Total assets, approximately $3 million; liabilities, approximately one million; and net worth, approximately two million.

Q And what are your credit needs?

A We don't need loans on a regular basis. Our credit needs arise when we are replacing machinery, or possibly looking to purchase another company, or something of that type.

Q How long have you been a member of the board of directors for the Phillipsburg National Bank & Trust Company?

A About one year.

Q And you were not an original member of the board when the merger was contemplated?

A No, I was not.

Q Do you believe the merger desirable?

A Yes, I do.

Q Why?

A I feel there is a definite need in our community for a larger bank. Being a businessman, I think that the local banks are losing a good deal of commercial and industrial loans. I think that they are missing opportunities in the [fol. 1002] trust fund area, because of the inability to have a fulltime trust officer.

Q Do you know of trust accounts that are available?

A Yes, I do.

Q In what area, or what type?

A I am thinking at the moment of our own profit-sharing fund.

Q And would you make that available if there were a permanent trust department?

A If there was a fulltime trust officer, and I thought he could do as well as the present trustee of our fund, yes, definitely.

Q You have an individual trustee now?

A Yes, we do.

Q How about specialization of management?

A I think that is very important, as far as local industry is concerned. I think a lot of small businessmen need good advice for their financial needs, as to what choices they have in raising money, and which is the best choice for their particular situation.

Q Do you think that a merger would make this possible?

A Oh, definitely, yes.

Q You have a retail business, do you not?

A Yes, we do.

[fol. 1003] Q And will you describe the retail business?

A We sell yard goods, by the yard, and related items, primarily to people who sew at home.

Q Is this located on the main highway?

A It is approximately two blocks off of the main highway.

Q Do you advertise?

A Yes, we do.

Q In what areas?

A We advertise in the Phillipsburg paper, the Easton paper, the Allentown paper, the Hackettstown paper; we advertise in the Stroudsburg newspaper, the Allentown radio station, as well as the Easton radio station.

Q Do you have a mailing list?

A Yes, we do.

Q And how do you compile this mailing list?

A This mailing list has been developed over the past eight years simply by having a book with a pencil by our cashier's table, with a sign saying, "If you would like to be notified of our next sale, please put your name and address down."

Q And how many names do you have?

A Over 18,000.

[fol. 1004] Q And have you broken it down into places of residence?

A Yes, we have.
Q Do you have that here?
A I have the breakdown here.
Q May I see it, please? What does it show generally?
A It shows generally the primary cities from which we draw our customers.
Q It shows primarily the customers that signed the notebook?
A That is correct.
MR. MEYNER: I should like to offer this in evidence.
THE COURT: Any objection?
MR. WEINBAUM: No objection.
THE COURT: Mark it in evidence.
(Exhibit D-50 marked in evidence.)
THE COURT: The record will note the fact that the last questions addressed to the witness were with reference to D-50 now marked in evidence.

DIRECT EXAMINATION

BY MR. ROCHE:

Q Mr. McGinley, have you ever comptemplated merging with any corporation recently?
A Yes. We negotiated a possible acquisition early this year.
[fol. 1005] Q Did that go through?
A No, it did not.
Q Why not?
A Well, in a few words, we were outbid.
THE COURT: What does that have to do with this case?
Q Do you tell us why you lost out on this; is there any reason?
A To make the answer as short as possible, I will say that I feel we could have purchased this corporation if we had had access to a specialist in the commercial and industrial loan field. We simply did not know that we could have borrowed the amount of money that we could have. Had we known this, I feel we would have had the opportunity to complete this acquisition.

Q Do you feel there are any such specialists in the area today?

A No, I don't think so.

* * * *

[fol. 1006] CROSS–EXAMINATION

BY MR. AUSTIN:

Q Mr. McGinley, with what banks do you have banking relationships either personally or your business, McGinley Mills?

A With Northampton National Bank in Easton, with the Phillipsburg National Bank and I have done business with the Phillipsburg Trust Company.

Q Do you have any other banks?

A Personal or corporate?

Q Well, both, personal and corporate.

A Well, the company does own fifty percent of the stock of another corporation which does business with the Berwick National Bank in Berwick, Pennsylvania.

Q Will you please repeat the name?

A The Berwick National Bank in Berwick, Pennsylvania. They also do business with Meinhard Commercial Company in New York City.

[fol. 1007] Q Is that a bank or a bank affiliate?

A Primarily a factoring concern.

* * * *

Q You have indicated, I believe, that you don't need credit–at least your company doesn't need credit on a regular basis but primarily when you want to purchase machinery. About how often do you have to purchase new machinery or have to have old machinery repaired, or anything that would require a sizeable loan, say in the $100,000 range?

A Well, in the $100,000 range I would say only once every couple of years.

Q Have you within the past couple of years had to obtain that type of loan, that size loan?

A In 1964 we did have a sizeable replacement of machinery.

Q And what bank or what other financial institution furnished the credit in that instance?

A The money we needed was furnished through the Easton–the Northampton National Bank in Easton and the Philadelphia National Bank.

Q And you do not still maintain a banking relationship with the Philadelphia National Bank? [fol. 1008]

A Do I? Yes, because we still owe the money.

Q May I ask what factors accounted for your resorting to Philadelphia for this size loan in 1964?

A There was no local bank that could handle the amount.

Q Do you know what the combined lending limits of the three Phillipsburg banks would have been at about that time?

A I don't imagine it would have been any more than $300,000 at that time.

Q But the loan itself was for around $100,000, you say?

A Oh, no.

Q How large was it?

A The total that we borrowed at that time was $600,000.

Q You just testified that your recent, or your company's recent merger plans failed because you were unaware that you could borrow the amount of money that you would have needed in order to consummate the merger, I believe. Did you give any consideration to the same bank, the Philadephia National Bank in this connection?

A Did I give consideration to it in what way?

Q In the sense that here was an alternative source of cash, No. 1? To begin with, how much money would you have needed in order to consummate the merger?

A I estimate we would have had to have a line of credit [fol. 1009] of a million one hundred thousand.

Q But since you still have a banking relationship with the Philadephia National Bank, did it occur to you that you might have been able to borrow that much money from that bank? Did you need a C and I loan specialist to tell you that?

A It was a matter of timing. During the negotiations at one point we did have a price agreed upon and the matter of payments were to be agreed upon, and I didn't at that time feel that I had to ask to find out if I could borrow this much

money from the bank, and suddenly we were notified by the people involved that they had a higher bid, and a much faster pay-off time. I just brought that up because if I had known that I could have gone directly to a large city bank and gotten this money in the pay-off time we needed and we could have paid the stockholders a quick pay-out that they desired, that they were looking for.

Q Did you make contact with the Philadelphia National Bank in order to discuss the merger plans and the need for a loan with a quick pay-out?

A We discussed our merger plans, but at that time I told them what I just told you, that it didn't appear that we were going to need any more than it appeared at that time immediately.

* * * *

[fol. 1012] WALTER C. MONEY, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?

A 84 Battin Road, Fair Haven, New Jersey.

Q Would you state your business background, business and educational background?

A Briefly, after graduating from high school, I enlisted in the Military Service in 1941. I had nine months as an [fol. 1013] enlisted man, Officers Candidate School, promoted to the rank of Major by 1945 as commanding officer of a battalion. Released and recalled to military service for the Korean situation shortly thereafter. Released three years later. Following the military, I attended New York University. I then went into personnel management work with a firm and later branched into consulting and general management consultations.

Following that, I joined the Elizabethtown Gas Company in 1959 as personnel director and remained in that capacity until October of 1965, at which time I became executive vice president of the Northwest Jersey Natural Gas Company, a

wholly-owned subsidiary of Elizabethtown Gas. I was at that time a secretary of the parent company, Elizabethtown Gas Company. I was at that time made assistant vice president of the Elizabethtown Water Company, and I still carry on some private consulting, and I still am in these capacities.

Q What is the operation of the Northwest Jersey Natural Gas Company?

A Northwest Jersey is a wholly-owned subsidiary of Elizabethtown. It is involved in the distribution and sale of natural gas throughout Hunterdon and Warren and Sussex Counties, portions of Morris and Mercer Counties.

Q You serve the Phillipsburg area as part of that [fol. 1014] area?

A Yes sir, we do.

Q Are you also familiar with Northampton and Lehigh County?

A Not too well. We are restricted in our activities to the areas I mentioned by virtue of the fact that we are a publicly-regulated industry and do not do business on the other side of the river.

Q Will you describe the growth of this area covered by the Northwest Jersey Gas Company.

A Basically, our reason for purchasing these companies was because of the potential growth of the areas. In fact, we as parent company were restricted in our activity and the growth we saw was in the western part of the state. Since 1965 our company has grown from a $2 million gross revenue company to a $4 million gross revenue company in three years. I am very much impressed with the growth that has taken place, but far more so with the growth that I anticipate will take place in the next several years, primarily because of Route 78 and Route 80 and industry starting to come into the area.

Q Will you describe some of that industrial growth?

A We currently have received an inquiry and have actually—not a written order, but almost a firm order from the Procter & Gamble Company which is building a plant [fol. 1015] in Raritan Township just outside the Borough of Flemington. This will be a large gas user, a large employer, one whose gas consumption will be as great as that of the Town of Flemington by way of comparison.

We have received an order from the U. S. Radium Corporation in Beattystown just outside of Hackettstown for another of the same similar situation where their consumption would be equivalent to that of the Town of Hackettstown. They started to break ground, and this November will be starting to use some gas.

We will have the first total energy plant for a housing type of activity in this section of the country in Panther Valley which is in Allamuchy, just north of Hackettstown. This is a large residential complex wherein there will be apartment-type units and the complete generation of electricity and gas heating, cooling and cooking will all be done through natural gas. The apartments are partially constructed. The total energy plant is in process. This activity, I think, will be fully activated by the spring and in addition to that this company is building large residential homes surrounding a golf course, all of which is on an access road to Route 80, and they presently have some 25 or 30 homes up, and I anticipate tremendous growth as a result of Route 80 right in that area.

Generally speaking, last month our sales [fol. 1016] department picked up fourteen additional commercial-industrial accounts throughout the general area we are describing, some large, some relatively small, but for an annual revenue of $16,000, and this is the kind of growth we see in the area.

Q How about the Belvidere area?

A The Belvidere area is at the moment not moving, but there is much anticipated growth as a result of Hoffmann-LaRoche coming into the area. They put in a warehouse. We have been in touch with them and they with us about the possibility of natural gas for large usage. I am not familiar with what they have in mind except I anticipate growth. That is the largest thing, I say, at the moment in Belvidere-White Township area.

Q How about existing industries in the Phillipsburg area?

A One of the largest is Ingersoll-Rand which has been an extremely active customer, and which is continuing to grow from our point of view. I expect a large quantity of gas to be used for processing.

Warren Paving is just outside that area.

Q Just outside of Phillipsburg?

A Yes. It is growing and constantly active, and they are in the blacktop paving business which is an indication of growth, I believe in the area. These are signs we are [fol. 1017] looking for. Industrially those are the two.

Q How about Shahmoon?

A Shahmoon Industries, yes. I forgot that. Shahmoon is a good, active, steadily-growing account, not tremendously growing, but growing steadily.

Q That is in Phillipsburg?

A Yes.

Q How about Baker Chemical?

A Baker Chemical has two locations, one in Phillipsburg and I believe the other is up north of Hackettstown, but it is an extremely good steadily-growing company. Again I expect from that standpoint gas revenue growth.

Q How about Sun?

A Sun in Washington has been growing, expanding quite rapidly. This year they have put in an additional building and are expanding their personnel activities.

Q American Can.

A That is part of American Can. Sun Tube is a division of American Can, I believe.

Q Riegel Paper.

A Riegel Paper is one of the largest industries in the area located in Milford, Riegel Ridge. Last year we ran a twelve-mile, 6 and 8-inch pipeline to that industry alone because of their tremendous usage, and anticipated growth. As a result of that, incidentally, there will be growth, I [fol. 1018] believe, along the area where we ran our pipeline from our new village plant just outside of Phillipsburg down to Milford, down through Holland Township and that general area.

Q How about the acquisition of land in the Harmony area?

A That is one of the things I'm trying to learn more about. There is some acquisition of land, but I don't know by whom or for what purpose. I am strictly talking from rumor that it has been done and being done, but we can't learn what or why. We have had inquiry from industrial realtors about the availability of industrial gas in that area, but I don't know for what purpose.

[fol. 1019] Q How about the collection of your accounts from small consumers?

A We handle it in two ways. We have a commercial office in Flemington, a commercial office in Phillipsburg, and another in Newton, and an activity at our Route 31, Washington, office, at all of which points we do collect from customers. In addition to this, to make it more convenient for our customers, we arrange with local banks for them to collect for us and reimburse us. We have approximately twelve banks throughout the area who do collect for us and reimburse us.

Q And how is the payment usually made?

A Generally speaking, these are cash payments at these points. That is the reason these people come in there, rather than handle checks.

Q And you pay a small fee to the banks for this–

A A varying fee. Yes, we pay varying fees for money, a per-capital basis or per-collection basis.

Q And to your knowledge, is Phillipsburg National one of the collectors?

A It is one of them.

Q Have you borrowed money in the area?

A We have with some limitations. We have borrowed money from two of the local banks in the area. Generally speaking, we have had to go outside.

[fol. 1020] Q Would you borrow money if there were a larger loan limit?

A We would prefer to borrow in the area, if the lending capacity of the banks was great enough and the situation was competitive, primarily because we are doing business in that particular area and we feel morally obligated; and, secondly it is much more convenient.

Q What are the two banks that you have been dealing with?

A We did borrow from Phillipsburg–if I am correct in my statement–National Bank & Trust Company to the tune of $110,000 in December of 1966. We have borrowed on several occasions from the Hunterdon County National Bank. These are the two banks that have lending capacities great enough to make it worthwhile.

Q And if the Phillipsburg National Bank could double its capacity, would you be going to them?

A If it were competitive; yes, sir.

Q Up to this point, up to $110,000, has it been competitive?

A It was competitive, yes.

MR. MEYNER: Cross-examination.

CROSS-EXAMINTION

BY MR. AUSTIN:

* * * *

[fol. 1021] Q And what sources have you resorted to, what financial sources have you resorted to for your credit, other than the Phillipsburg National and the Hunterdon [fol. 1022] County National, since 1966?

A During the period of October 1st, 1965, when we took over, until February 27th, 1967, we had a total of $2,010,000. outstanding in short-term loans, which was from the National State Bank, Elizabeth; First National Bank & Trust Company in Perth Amboy–First Bank & Trust Company in Perth Amboy, I am sorry; Phillipsburg National–at that time–Bank & Trust; First National Bank of Jersey City, during that period. Then secondly, subsequent to August of 1967, we were back in the bank again on short-term money, and from then until April 22nd, 1968, for $3,500,000. That money was borrowed from the Hunterdon County National Bank, National State Bank, we took an amount from the Washington Trust Company, which is a local bank but which was done in conjunction with a Newark bank, which assisted their lending capacity, Summit and Elizabeth Trust Company, National State Bank, First National Bank of Jersey City.

Q So it appears that in order to satisfy your credit requirements, Mr. Money, you have had to resort to participation in loans by banks all the way into Newark, is that correct, based on your past history?

A That is correct.

Q So that, in effect, should the merger be allowed, the resulting bank would have a lending capacity of [fol. 1023] approximately two hundred and thirty or forty thousand,

which, in turn, would not appear to satisfy your credit requirements?

A I don't know of any one bank that would satisfy our credit requirements.

* * * *

Q Are you familiar with population trends in the immediate Phillipsburg area, which would include the City of Phillipsburg, Lopatcong Township, Greenwich Township, Pohatcong Township, and Alpha Borough over the past five, ten years?

A Not on a statistical basis, but from general knowledge, I believe so, yes.

Q But your conception of what has been happening there is that there has been fairly rapid commercial and industrial growth, I believe?

A Throughout the entire area that we serve, yes.

* * * *

[fol. 1024] Q Would it surprise you to know, Mr. Money, that according to the New Jersey Department of Conservation and Economic Development, Phillipsburg and environs, the area I just described has grown from about 28,551 in population in 1960 to an estimated 29,960 as of July, 1967, or about 1,400 people–additional persons–in seven years?

A It doesn't surprise me in the least, because I didn't really anticipate the growth was in Phillipsburg per se. I mentioned the area in which we are doing business and specifically other areas in that particular community.

* * * *

[fol. 1027] Q Well, let's return for a second to your credit departments again, Mr. Money. It seems that from your testimony the question of getting the best deal on loans is a definite factor or consideration with you in terms of meeting your company's credit requirements. Even if we had–or assuming we had a commercial bank in Phillipsburg with a lending capacity of, say, one million dollars, if you could get

a better deal out of National Newark & Essex or a New York bank or a Philadelphia bank, would you say at full 1 per cent on a million dollar loan, would you still be inclined to deal locally with the Phillipsburg Bank as opposed with the other?

A As a businessman, I wouldn't be inclined to deal any place that I couldn't do the best thing for my company.

* * * *

HOMER KRIPKE, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?

A I live at 40 Rock Spring Avenue, West Orange, New Jersey.

Q And where are you presently engaged in your [fol. 1028] work?

A I am Professor of Law at New York University. I do a little bit of legal consulting.

Q Will you give us your educational and professional and business background?

A I graduated in Arts and Law from the University of Michigan; I practiced briefly in my native city of Toledo, Ohio, with a small law firm for five years, with a large corporate and financial law firm in Chicago; then I was for five and a half years on the staff of the United States Securities & Exchange Commission, and was assistant solicitor, that is, assistant head of the legal department during the last several years of that; then for seventeen years I was assistant secretary of CIT Financial Corporation; I left that in 1960 to become a member of a law firm in New Jersey and New York; I left that to become senior vice president and general counsel of another finance company, Allied Concord Financial Corporation; but I was leading a double life because I devoted so much time to legal education and public legal committees, and I finally resigned and became a Professor of Law at New York University.

Q Would you tell us the role of finance companies in the area of consumer credit, machinery credit, inventory and receivables credit?

A Finance companies are financial intermediaries which [fol. 1029] arose in this century as our society became industrialized and mechanized to supply credit needs that the banks would not originally undertake. The original conception of bank credit was that the bank taking—taking demand deposits, would only make loans that were self-liquidating, such as a loan to enable a merchant to buy Christmas inventory, which was automatically liquidated by the sale of the inventory.

As hard goods developed, consumer hard goods in the first instance and machinery in a later instance, you had items that had to be committed for by a single economic decision, and which released a satisfaction over a period of years. The purchase of an automobile might be likened, for instance, to the purchase of a bus ticket good for five years, or the purchase of a washing machine might be likened to paying a laundress three years in advance.

The banks originally refused to provide the funds which enabled consumers to make those substantial decisions because the banks were caught with the old cliches about mortgaging your future and going into debt and the like.

Finance companies arose to supply the need for that kind of credit in recognition of the fact that an installment payment contract was the economic means by which these economic goods embodied in a single piece of machinery [fol. 1030] could be paid for as they were used over their economic life. So the finance companies early entered the field of automobile financing, later all of the consumer appliances, radios and televisions.

In the same fashion, a little later the finance companies began financing the purchase of machinery, all kinds of machinery; the biggest types are road building equipment and machine tools, but it includes everything from the embroidering machines used in Hudson County to office machines, typewriters, adding machines, cash registers and the chain store coffee grinding machines, commercial refrigeration and the like, everything that is income-producing machinery.

A third development of finance companies was the fact that almost all small business—and by "small business" I mean people with worth of sales up to a few million dollars a year—is caught with inadequate capital and a working capital

pressure because of the proliferation of inventories of heavy types and the extensive use of credit. The merchant or the distributor has to pay for his inventory before he collects from the sale of the inventory, and he has a working capital pinch. The finance companies commenced to enable the merchant to cash his receivables, so to speak, either by selling them to a finance company, called a factor, or by borrowing against [fol. 1031] them from a finance company, called a commercial finance company; thus enabling him to get the cash with which to pay his own bills. And they extended that to loans against his inventory even before it was sold, so that the merchant would have the wherewithal to take his trade discounts and pay his suppliers.

So you have, I think, essentially three types of finance company activity: one in consumer goods, one in machinery and equipment, and one in inventory and receivables.

Q Can you give us any idea of the size of these operations?

A I worked for CIT Financial Corporation, which is the largest independent company. Its size is exceeded only by that of General Motors Acceptance Corporation, but the figures that I am going to give in approximation are not untypical of several other finance companies, Commercial Credit Corporation is nearly as big as CIT, Associates Investments Corporation follows shortly after, and then the companies range all the way down.

CIT has a net worth today presently of between 300 and $400 million. Its assets are substantially in excess of $2 billion. More than $5 billion flows in and out of the company every year. It is larger than any but perhaps a couple of dozen of the largest metropolitan banks [fol. 1032] in the country.

Q Do you see this constant vying for credit supplanting the banks?

A Not at all. It did supply this kind of credit for many years to the exclusion of the banks in the fields I mentioned because these kinds of credit take trained personnel and technicians. The banks did not have the personnel, and seemed to be unwilling to learn the techniques. Of recent years, since the war, the metropolitan banks have entered into these fields in some cases; notably over the last few years the

big New York banks have each acquired the techniques and the personnel by buying finance companies, and even the Philadelphia National Bank bought a New York finance company.

In addition to that, banks all through the country have acquired the techniques by borrowing—I don't mean borrowing, I mean by outbidding the finance companies for the personnel that the finance companies had trained.

Q Do you see a need on the part of a small bank to develop this technique?

A Definitely. The fact is that we have a situation which seems not to be sufficiently recognized, that a large part of credit demand does not originate, as people assume, by an applicant walking into the marble halls of a bank and [fol. 1033] applying for credit to the loan officer, but credit originates in the merchants' salesroom by selling refrigerators, automobiles or machinery on an installment basis.

The merchant then has an installment obligation which he owns, and he can sell it to anyone in the United States, no restrictions on bank–branch banking apply to the sale of that kind of existing instrument. And the finance companies, in any event, are not restricted by any rules of branch banking.

So that if I can give you an example, three years ago when I was senior vice president of a relatively small finance company in New York, its assets were $150 million, and that is relatively small for a finance company. We were competing for mobile home installment paper in one small city in Virginia and another small city in North Carolina. Mobile homes are a substantial part of all new housing in the United States. It mustn't be thought of just as vacation equipment. Our competition in that case was on the one hand General Electric Credit Corporation, a great national corporation, General Acceptance Corporation, another national finance company whose headquarters are in Allentown, Pennsylvania, the Girard Trust Company of Philadelphia, which buys that kind of installment paper throughout the entire Atlantic seaboard, but we had no competition in those two cases from local banks because [fol. 1034] there were no local banks equipped to handle that size of dealer transaction.

[fol. 1035] Q You have talked about the larger finance companies, how about the consumer finance, the small loan companies?

A The small loan companies are also tremendous gregations. The two biggest ones are Beneficial Finance, nich is headquartered in New Jersey, and Household, which headquartered in New York—in Chicago. Both have assets over a billion dollars and hundreds, if not thousands, of anch offices all throughout the country, and the other mpanies range down in size. There are very big regional mpanies. The compete throughout the country with banks r small loans.

The jurisdictional limits have been steadily increasing in sponse to inflation, and they represent very substantial mpetition to banks in the small loan area at this time. here is presently a proposal—a proposed Uniform Consumer edit Code just approved by the American Bar Association at meeting in Philadelphia last August, at which I was a ecial advisor in the drafting, which proposes greatly to move the restrictions on small loan lending by requiring enses only in the case of lending at the highest rates.

The country banks, the small banks, have asked the nerican Bankers Association to oppose that freeing up of mpetition because they have said that they couldn't stand e competition with the finance companies while they are ol. 1036] held down by branch banking rules. What will me of that dispute I do not know, but they presently present substantial competition with the banks. They are nited by the present licensing requirements. These licensing quirements are limited only to the small loan company, not the other three types of finance companies I described.

Q Do I gather that smaller banks can get some of the siness that presently is had by the large finance companies d the consumer loan companies?

A They do get some, but the question is whether they ve the techniques to compete effectively. For instance, in e business of handling automobile installment paper, anyone no wants to buy a dealer's paper in large volume must be epared to extend to the dealer inventory or floor plan edit, and this is dangerous because your security interest on e inventory is lost, under the Uniform Commercial Code, by sale of the inventory to a buyer in the ordinary course, and u have a case of sudden death. A dealer can, if his credit d moral fiber weakens, he can sell out hundreds of ousands of dollars worth of inventory over a weekend, and e creditor is left to whistle. So floor plan credit requires

nerves of steel and considerable experience and it is very dangerous for some small lender to undertake it unless they do enough of it to staff themselves properly.

[fol. 1037] Q There is a necessity for a staff?

A There is definitely a necessity for staff.

Q Where did the finance companies—and let's talk about the larger ones, the first category—where do they get their money?

A I have described them as financial intermediaries, and they get their money from every source in which money is accumulated in the first instance.

If I may go back to CIT for a moment. I left CIT in 1960, and I knew its picture quite thoroughly at that time because I handled its financial borrowings from the legal point of view, and I am in sufficient touch with the company today to know that there has been no material change in its picture, with one exception that I will mention. At that time it had approximately a half a billion dollars of private borrowings from the major insurance companies. At one point it had about a hundred million from the Prudential, a hundred million from the Equitable, seventy-five million, if I recall, from the Metropolitan, and so on.

These were handled directly through their treasury staff. They also at various times would sell fifty million dollar blocks designed to appeal to smaller institutions, both the smaller insurance companies, like the Northwestern in Chicago which might take ten million [fol. 1038] dollars and the large pension funds. CIT's term paper was held by the U. S. Steel Pension Fund, the AT&T Pension Fund, the General Electric Pension Fund, and so on. Their paper was also held by the great university endowments, Harvard, Yale and Chicago. They all bought CIT term paper. They also reached the public capital market through the sale of publicly-issued debentures, sold to underwriters, and my latest recollection is that in 1960 we had something like 350 million of public money sold to public debentures.

There was a time when the finance companies obtained a significant portion of their funds by short-term borrowings from the banks. You may still see figures, for instance, to the effect that ten percent of all bank loans are to finance companies. I don't believe that that kind of figure is reliable

any more because the banks price themselves out of the market. A bank typically will lend to a major finance company at the prime rate, which presently is six and a half percent or thereabouts, but will require a compensating deposit of twenty percent. That means that twenty percent of the fund is sterile, so you only get eighty percent of the fund, so your actual cost is twenty-five percent higher than the normal rate, which makes a bank loan rate to a finance company today something like eight to eight and a half percent. The finance companies can borrow more cheaply than that both from the institutions [fol. 1039] that I have described and more particularly in what is called the commercial paper market.

The finance companies borrow from every major corporation in the United States on short-term notes with a maturity not to exceed nine months, because that is necessary to stay away from the Securities Actof 1933. They use so much money, and they have such a constant flow of funds that they are willing to take any maturity that suits the convenience of a corporation. They will take, for instance, a thirty-six-day note from a corporation for three million dollars and pay the money back to the corporation thirty-six days from now, because that is the day on which the corporation mails out its dividend checks, and you have companies like the tobacco companies which are heavier users of funds while they are accumulating inventory and are heavy lenders of funds to finance companies when they have liquidated their inventory and before they buy their next year's crop.

The oil companies are also heavy lenders to the finance companies on short-term funds, and I know of one oil company which at one time lost an advantageous buy because it couldn't raise the cash rapidly enough, and this has had not less than fifty million dollars, ten million from CIT and forty million from other financial companies outstanding in the years, rolling it over on short-term notes for immediate accessibility [fol. 1040] when they have a deal.

The big chemical companies always use the finance companies instead of the banks for what are in effect deposits, very close to deposits, because they get a rate. Now, it is because of this development, in my opinion, that the

finance companies creamed off, if you will, corporate funds that would otherwise have gone to the banks, that the banks were short of funds in our financial stringency of 1966 and at the present time, and the banks therefore had to borrow the finance companies' technique and go after their money on which they would pay interest on a short-term basis. The banks called it time certificates of deposit, but it is exactly the same as the finance companies' commercial paper. Then the question is can the finance companies compete when the banks are in the market? The answer is yes, they can do this better than the banks because the banks in 1966 were losing their time certificates because the Federal Reserve Board limited the rate that the banks could pay.

The finance companies were unlimited in rates. They outbid the banks. The finance companies had plenty of money when the banks were tight.

Q We have had testimony that the finance companies get their money from the bank. Would you say that that is untrue?

[fol. 1041] A It is still true to a limited extent. The big finance companies still maintain bank lines which they use essentially nowadays for an emergency, to guard against the catastrophic possibility that all of their commercial paper would fail to be renewed, but they are nearly out of the bank because bank money represents the highest priced money of all the direct gatherers of savings.

I spent a year two years ago advising on the organization of the legal department of a relatively small finance company which had assets, I think, of less than one hundred million dollars, and this company at one point had about fifty million dollars in insurance term obligations and about fifty million dollars in bank loans, and rather than run the risk of the banks cutting them off during the bank stringency they employed a socalled commercial paper broker to sell their commercial paper, and today they are out of the banks entirely and instead of the banks they are using short-term commercial paper to the tune of thirty to fifty million dollars.

Q Would you be able to make an estimate of how much of the money finance companies have to loan comes from banks?

A Oh, in today's picture I would say substantially less than ten percent.

MR. MEYNER: Cross-examine.

[fol. 1042] CROSS-EXAMINATION

BY MR. WEINBAUM:

* * * *

[fol. 1044] Q To the extent, Professor Kripke, that a finance company—a large finance company—has to get its funds from someone like Standard Oil, for instance, how would the rates at which it is able to finance items—purchases of equipment, or in the consumer loan field, the purchase of a car—how would these rates compare to the lending rates of, say, at a commercial bank?

A They are higher. And that is the point I have perhaps not emphasized sufficiently, so I would like to repeat it. The finance companies are intermediaries, they always get their money from a primary accumulator, and their charges to the users of money are higher than those of commercial [fol. 1045] banks. We have had a history, as I said, of the commercial banks entering the field of providing these kinds of credit. And as they have done so in the metropolitan area, the rates have come down; the finance companies cannot compete with a primary accumulator of credit; and we have seen the situation of the finance companies increasingly being driven into non-metropolitan areas, where they can get the rate, because the local banks are not supplying this kind of funds. So that the rates that the finance company needs are available in local areas where the banks are too small to supply this kind of service.

* * * *

[fol. 1046] Q With respect to the smaller finance companies, the ones that deal through—perhaps among others, the New York commercial paper brokers—how would the rates at which they lend money to the public compare to the rates at which commercial banks would lend money to the public?

THE WITNESS: Their rates, too, would be higher, because their source of money is more expensive.

Q And would their rates likely be higher—that is, those of the smaller finance companies—than the rates of finance companies borrowing from Standard Oil might charge?

A Yes, I think their rates would be higher. And the matter sorts itself down to a matter of risk, where the bigger companies take the lesser risks at a lower rate than the smaller companies take a somewhat greater risk at a higher rate and maintain a very intensive supervision.

[fol. 1047] A Well, there is a National Conference of Commercial Receivables Companies, whose function is primarily the inventory and receivables loans I mentioned, and, to a lesser extent, the machinery loans. This group does not do consumer financing. They have roughly 100 or 125 members, of which 50 to 75 were in New York. We have this phenomenon of the banks buying up the companies in New York and I am not sure how many are left. But it is still 50 to 75, I think.

* * * *

[fol. 1051] Q And why is that?

A I guess people always need money. And even in periods that appear to be prosperous, we always have a hard core of poverty where people will borrow from small loan companies.

Q How do the rates which small loan companies charge a person compare to those which a bank would charge a person on a similar loan?

A The small loan rates tend to be very close to the statutory maximums, which are typically 2, 2-1/2 and 3 per cent a month, or 24 to 36 per cent a year. No bank ever charges a rate that high. The bank rates for consumer credit in New York tend to be at about 10 to 12 per cent per annum. I don't know what the typical rate is in New Jersey. And I am not up to date on what the authorization for personal loans in New Jersey banks is.

* * * *

[fol. 1053] JACOB A. GREEN, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Mr. Green, where do you reside?
A 2710 Spring Garden Street, Easton, Pennsylvania.
Q Where do you conduct your business?
A Alpha, New Jersey.
Q And would you state, briefly, your business background?
A Just my business background?
Q Educational.
A My education is only limited to high school and evening courses in Allentown, Penn State. I worked for Bethlehem for eleven years, at which time I left to become general manager of Valley Tool & Precision in Easton. After ten years, I started my own business, in 1956.
Q How much did you start with?
A Pardon?
Q How much did you start with?
A I had a partner at the time. We each invested $10,000. I am president of the company, my partner recently died. We have been incorporated since.
Q Do you have an interest in—do you have two companies?
[fol. 1054] A Yes. I am president of Alpha Lehigh Tool Company which does the manufacturing, and I have an interest in Alpha Press, which designs and sells hydraulic presses.
Q Where, for instance, do you get your accounting done?
A Our accountant for both companies is Steinhardt & Humphrey in Washington, New Jersey.
Q Where do you get your insurance?
A Our business insurance is bought through a company in Allentown, Pennsylvania.
Q Do you make any stock purchases?
A Personally? Yes.
Q Where?

A Beir, Aldrich & Barber handles the account in Allentown.

Q How about your employees; how extensive an area they come from?

A Well, we have employees coming from Stroudsburg, Pennsylvania, one of them, and some from Allentown, Pennsylvania, Bethlehem, Easton. The majority of them are not from Phillipsburg.

Q Would you describe what a statement would show as to the one company that you own, it is Lehigh–Alpha Lehigh Tool & Machine Company; what is the value of that company?

A Well, the net worth of the company, excluding the real [fol. 1055] estate, is in the area of $350,000.

Q And how about the other company?

A Alpha Press?

Q Yes.

A About $250,000.

Q Have you had occasion to borrow money?

A In Alpha Lehigh Tool, yes, I borrowed money from a Phillipsburg bank.

Q Which one?

A The Second National Bank.

Q Did you have some experiences in needing money to buy equipment from time to time?

A In the beginning we dealt with an Easton bank, and we borrowed money, we borrowed $10,000, which was borrowed on a chattel mortgage. A few months later we tried to borrow another $5,000, and we were turned down; I never did know why, they just turned us down.

We went to CIT and negotiated the whole deal on the telephone. We bought the equipment only because CIT at least was knowledgeable of what we were trying to do and what the equipment was worth that we were trying to buy.

Q Do you have a real need of funds with Alpha Press?

A Yes. Alpha Press actually is the company that will be forced to do the major part of the financing because [fol. 1056] they handle all of the sales. These presses run pretty large in size, and quite expensively in money. Two presses we are currently building both sell for $150,000 apiece.

Q And to whom are they generally sold?

A All of this equipment is sold to the major companies in the United States. We sold them to RCA, Western Electric, Crucible Steel Company, and the like of that, American Can.

Q What do you contemplate your borrowing needs to be?

A At the moment we have applied for a maximum loan of $110,000 from the Second National Bank. I don't know whether that has been approved or not.

Q What do you contemplate your needs to be?

A Well, we are fully aware that in the next year we are going to have to get additional monies, No. 1, for working capital, because we expect our business to triple within the next year; we are also having a building designed which is going to run in the neighborhood of $120,000, so we know that we are going to have to finance that with a mortgage.

Q Would a larger bank help you?

A Absolutely.

Q Why?

A Well, No. 1, my personal experience in borrowing money from a bank is that unless they understand our business, that [fol. 1057] is, local banks, we can't seem to get across to them our needs. This bank that we are currently dealing with has been to our place, they know our operation, and we just don't like to go out and try to get a loan anywhere else.

Q How would this larger bank be able to help you?

A Well, I am sure that we are going to need more than $110,000 even in the coming year. At the moment that is all that we have been able to talk about.

Q Have you been solicited over the course of the years by other banks?

A Yes.

Q Where?

A Union Trust in Bethlehem has many times called me and been in to our place; just recently some bank in Allentown—I can't remember the name—wrote me a letter.

Q Were you interviewed previously by the two attorneys who are representing the plaintiff here?

A Yes, they have been to our plant.

Q Do you have any personal savings accounts?

A Yes.

Q Where do you have them?

A New York and California.

Q Do you have any trust business available?

A We are currently setting up a pension fund. We haven't got it started; we intend to put it in before the [fol. 1058] end of the year. There will be—we don't at the moment—but there will be before the year is over.

Q Would you be interested in a trust department that has a fulltime officer?

A Yes, I assume we would be obliged to.

MR. MEYNER: Cross-examine.

CROSS-EXAMINATION

BY MR. AUSTIN:

* * * *

[fol. 1060] Q Do you recall having stated that both defendant banks, that is Phillipsburg National and Second National solicit your business directly?

A Second National has solicited business with us, yes. I am confused by the names. We are dealing with the Second National Bank. Phillipsburg National has solicited our business quite some time ago.

Q From your testimony, I assume that your credit needs at least up to this point have not been in excess of $110,000 lending limit of the Second National Bank, is that correct?

A The request for 110,000 was made because this was the maximum that—we had asked them what the maximum amount of money would be they could loan us and they told us $110,000.

Q How much did you actually need at that time, Mr. Green?

A At this time this will approximately meet our current [fol. 1061] needs. However, we feel within the next six months to a year it will not.

Q Do you regard Phillipsburg National as a secondary source of credit?

A No. I regard Phillipsburg National as our major source of borrowing.

Q I thought you indicated you do most of your

borrowing or all of your borrowing from the Second National.

A The Second National Bank is the bank that Alpha Lehigh Tool & Machinery Company, the manufacturing company deals with and always has. Phillipsburg National Bank is the bank that Alpha Press Company, that does the major borrowing, deals with.

* * * *

Q Do you regard any of the Easton banks as alternative sources of credit for either of your companies?

[fol. 1062] A I was not happy with the dealing I got out of the Easton banks, and they have since merged with one of the newer Easton banks, so I would have no interest in going back to them.

* * * *

Q if because of the lending limitations of both banks you were forced to go across the river to Easton to satisfy your credit needs, would you consider that?

A If I were forced to I would have no choice, I suppose, but if I had my choice of banks I think I would deal with Union Trust in Bethlehem. They have trained people, at least in our industry, who call on people like ourselves and they understand our situation so much better. It has been my past experience, at least five or six years ago, that that was so.

Q Did you indicate that the banks in Easton liked to loan money across the river?

A Not in my case.

* * * *

[fol. 1064] Q Mr. Green, if in connection with your projected plant expansion you determine that you can obtain the $120,000 mortgage loan from the Easton National in Easton at a 6 per cent rate as opposed to a 6-1/2 per cent or higher rate in the Union Bank in Bethlehem, would you still do business—that business with the Bethlehem bank?

A Not at an extra half per cent, no.

* * * *

[fol. 1066] Q To what extent, Mr. Green, if any, do you feel that you or your company is tied to the Phillipsburg banks insofar as satisfying your credit needs are concerned, that is as opposed to other areas outside Phillipsburg?

A You said obliged?

Q Tied in terms of loyalties or any other consideration.

A Well, No. 1, it is a local bank which makes it more convenient, and No. 2, they have treated us fairly up to now, and I don't know that we are obligated or tied to them in any other fashion.

Q But you have indicated, have you not, that if you could get from one to a half a per cent difference on a mortgage loan in the Easton area as opposed to Bethlehem that you would prefer to take the Easton loan.

MR. MEYNER: Object.

THE COURT: Sustained. It is repetitious. He did say that, but there is no use in repeating it, and furthermore the answer could very well be anticipated. Who is going to pay a higher percentage for money at one place when he can get it cheaper at another?

* * * *

[fol. 1067] MASON F. PEARSALL, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?

A 2150 Gateway Terrace, Easton, Pennsylvania.

Q Where do you conduct your business?

A Our headquarters office is on Route 24 one mile east of Phillipsburg, New Jersey.

Q Under what name?

A Pearsall Chemical Corporation.

Q Will you state your education and business background.

A I graduated from Lehigh University in chemical engineering in 1943. I worked for the United States Rubber Company, Caratin Company and Delmar Company successively in various engineering and lower management-type jobs, and then in 1953 started the present company.

Q What would you say are your total assets?

A Our net worth is around a million dollars. As to total assets on the balance sheet, they are in the neighborhood of three million. I think.

Q And what did you start with?

A Fifteen thousand dollars.

[fol. 1068] Q About how many employees do you have?

A We have about 150, a hundred of them in the Phillipsburg area, that is, our office in Phillipsburg, and our plant, which is located six miles from Phillipsburg in Brainards, and fifty in other locations.

Q How about the mobility of your employees, where do they come from?

A Where most of them come from, I would say, Easton, Phillipsburg, Belvidere, Bethlehem, Washington, and some from other locations a little farther away.

Q Where do you carry your life insurance generally—I mean your insurance program?

A The company's general insurance is placed through a broker in Easton. Our life insurance, such as group life, is with an agent in Clinton, New Jersey.

Q And where do you carry your Blue Cross—or your hospitalization?

A In the operations in the Phillipsburg area we use Blue Cross and Blue Shield for the medical type insurance. In our operations in Texas we use another company. Tennessee Life, I think it is.

Q Did you have occasion to deal with the local banks when you started your enterprise?

A Yes, when we first located near Phillipsburg, we [fol. 1069] borrowed money from the Phillipsburg National Bank & Trust Company. At that time it was, as I recall, two or three hundred thousand dollars, or a couple hundred thousand dollars, in that order of magnitude.

Q There was participation at that time?

A Yes.

Q And where did you shift to do your borrowing?

A Well, later on, when we were looking for a larger loan, we negotiated with Phillipsburg and also with the Easton National Bank & Trust Company and the Union Bank in

Bethlehem, and eventually borrowed the money from the Easton National Bank & Trust Company.

Q Do you have a pension plan?

A Yes.

Q Would you be interested in giving trust work to a local bank with respect to this plan?

A Yes, we would. We are considering doing that right now.

Q And if the Phillipsburg National had a full trust office, would you give them consideration?

A We certainly would. We would—generally speaking, in a thing like that—prefer to do business locally, because of the convenience and also because the local people, other things being equal, will take more interest in our business.

[fol. 1070] Q You have heard about the merger, have you not?

A Yes.

Q Are you favorable to it?

A Yes.

Q Why?

A I think the merger should result in the bank having more capability along the lines of more staffing, as well as higher loan limits, capability for working with us and serving our needs, and enable them to have people who would have more time to spend with us in understanding our business and working with us.

Q If the merged bank results, would you be willing to return?

A Yes. Certainly willing to consider it.

Q Are you solicited by other banks?

A Yes. Representatives of banks from New York, Newark, Jersey City, Philadelphia, Allentown, Bethlehem, all have called on us within the last year.

Q Do you feel this merger will help business generally?

A Well, I feel it will, without having much knowledge—

Q How about businessmen like you?

A It would help us. I feel it would help us.

MR. MEYNER: That's all.

MR. ROACHE: I have a couple of questions.

[fol. 1071] DIRECT EXAMINATION

BY MR. ROACHE:

Q Mr. Pearsall, do you have any present need for a larger lending limit from a local bank?

A We are at the present time borrowing seven or eight hundred thousand dollars, and it seems to me that a little larger bank would be better able to work with us and help us.

Q Do you have any plans to enter into any other type of financing in the immediate future?

A Yes—The immediate future? You mean within—

Q The next year or so.

A The next year or so. We are going to sell equity. We are planning to sell equity, for one thing. And, for another thing, we would like to get into a position to have some long-term debt, and long-term borrowing, which we do not now have; and, of course, continue to use the banks for the kind of services that they offer.

Q After the long-term borrowing, would your needs be current or seasonal borrowing, so that you might need—would you need the seasonal nature?

A Somewhat. There is some—it's now—

Q Would the resulting bank be helpful in this particular area?

A Yes.

Q Would your needs be higher than the present [fol. 1072] lending limit?

A Well, the company is growing. Our company has been growing about thirty percent per year, so I assume our borrowing needs will increase.

Q Are you solicited by the local banks?

A Not so much the Easton and Phillipsburg banks. Although, of course, I see Joe Curry occasionally, and I guess he would consider this some kind of a contact with us, which I do, too. But the Easton and Phillipsburg banks haven't been aggressive compared with the Bethlehem, Allentown and Jersey City type banks.

Q To your way of thinking, is this a need in the community?

A Well, we would like to see them more aggressive and have more services.

Q For what purpose, for business advice?

A Yes, business advice, and so that we could go to them and borrow money, and they would understand what we are talking about. We would keep in touch with them. The more interaction we have with the bank, the more likely we are to get help from them when we need it.

Q Do you think that the resulting bank would be able to do more for you in this area?

A Yes.

* * * *

[fol. 1073] CROSS-EXAMINATION

BY MR. WEINBAUM:

* * * *

Q And do you have a loan at the Easton bank as well?

A No.

Q You do not?

A Not at this time. We did have, several years ago.

Q Could you approximate your total credit needs for 1966?

A 1966?

Q 1966 and 1967.

A You mean what the amount of our borrowing was during those years?

Q Yes, sir.

A Our total borrowing in those years was six or seven hundred thousand dollars.

Q In each year, or total?

A Yes, that was the balance that we had on our balance sheet.

Q And you had to turn to a city bank to accommodate a substantial portion of this borrowing?

[fol. 1074] A That's right.

* * * *

[fol. 1075] WARREN HILL, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?
A 5 Clinton Lane, Scotch Plains, New Jersey.
Q And what is your present position?
A I am president of the New Jersey Savings & Loan League.
Q And will you give us your educational and business background?
A I graduated from Rutgers in 1934, spent a year and a half in the Department of Economics as an assistant in the department, joined the New Jersey Savings & Loan League as a statistician, and was there about two years, and left and became the executive manager of the savings and loan association in Montclair, and returned to the League with the title of assistant secretary. I was off for about three years during World War II. I rejoined the League as executive vice-president and was named president in 1966.
Q You are familiar with the operations of savings and loans generally in New Jersey?
A Yes, sir.
Q And in other parts of the country?
A Yes, sir.
[fol. 1076] Q What are the services that a typical savings and loan company is able to offer today?
A The primary service on the lending side is mortgage loans, principally on one to four-family houses, although they can, within certain limits, make loans on houses, or housing of more than four families, and within some limits loans on commercial and industrial real estate, income-producing property, churches. They make property improvement loans, unsecured property improvement loans, they make educational loans, they make loans on the security of accounts, and they have some limited right of investment in government securities, Federal agency obligations, and in certain other types of so-called legal list securities.

On the other side of the balance sheet, their principal source of funds are savings. They seek savings from the public—

Q What types of accounts do they have?

A They have savings accounts where people deposit money out of their in units of five, ten, fifteen thousand dollars; regular paycheck, periodically, they have certificate accounts where they seek larger, bulk sums of money, and they have accounts from municipalities, Counties, other governmental agencies. Then as a service to their customers, they also have Christmas Clubs, vacation [fol. 1077] clubs, go-to-college clubs.

Q Are you familiar with the loan activity of some of the savings and loans in the Warren County area?

A From the statistics that are available to me, yes.

Q Would you describe that?

A Well, the associations in the immediate Warren County area are rather small in size and rather small lenders. I think—if memory serves me correctly—last year they made some $650,000 in mortgage loans, while the total savings and loan business within the State of New Jersey made some $750 million of mortgage loans. Then there are other lenders that come in from outside of the State. So the Warren County area was a very small proportion of the total, allocating it specifically to Warren County associations, which doesn't reflect the whole picture of lending in Warren County.

[fol. 1078] Q Well, are you talking about loans from outside of the county coming into the county?

A The one figure I mentioned, the $650,000, was specifically from Warren County associations, loans made in Warren County from associations outside of the county I don't have a statistic on. I have the general knowledge that the associations make loans in Warren County, associations located outside of Warren County. page 364-365

Q How do they usually get those loans?

A Loans primarily come through builders and realtors, and very few loans come from somebody walking in and knocking on the door because the loan originates when somebody wants to buy or build a house, and generally the builders and realtors have their contacts with lending institutions and have a source of supply of mortgage funds. Somebody, a builder that wanted to build in Warren County that might have been building in Morris County or some other county, chances are would stay right with the lending institution and would finance in that county.

Q You don't have those statistics?
A No.
Q But you do know that that is going on?
A From my general knowledge, yes.

* * * *

[fol. 1079] EDWARD E. HOWARD, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?
A I live in Bethlehem Township, 4317 Chetwin Terrace, Easton, Pennsylvania.
Q Would you state your educational and business background?
A I attended Lafayette College; several years with the Army; and I began with the Easton Express in 1953 as a salesman in the national advertising department; was made national advertising manager in 1964; promotion manager in 1966; and this past July was appointed director of advertising.
Q How large an ABC circulation does the Easton Express have?
A The last audit, which was September 30, 1967, was 50,787, we are currently running between 51 and 52,000 daily.
Q What is the radius of your circulation?
A Our circulation is primarily within a 15 to 20-mile [fol. 1080] radius. We cover the eastern portion of Northampton County, we are the dominant newspaper in Warren and Hunterdon Counties, New Jersey. Northampton County, of course, is in Pennsylvania.
Q As I understand it, you have three types of advertising, do you not?
A Yes.
Q What are they?
A We have national advertising, which still comes under my responsibility in addition to the total staffs, that represents the manufacturers and processers; we have retail advertising, which is the normal local retail accounts, which

run in the forward part of the newspaper, if you will, we have ten men on the retail staff, three of them cover the immediate Easton city area, we have one covering the area surrounding Easton, we have two covering Allentown, Bethlehem and the slate belt area, which are areas within 20 miles of Easton, and we have two men covering New Jersey.

Q This is in the retail area?

A This is strictly in the retail staff, right. In the classified department we have four salesmen, two covering Easton and its immediate surrounding area, one covering New Jersey, and another full time in the Allentown-Bethlehem area.

Q Getting back to national advertising, how do [fol. 1081] national companies developing a product or selling an item, large or small, approach the marketing?

A The majority of national companies today look at standard metropolitan statistical areas. The definition, if you will, has been developed by the Bureau of Budget. It defines, just very quickly, a standard metropolitan area as an area comprised of contigous counties where the social and economic desires of the people are integrated, and that the major cities are within 20 miles of one another; in other words, it basically designates a marketing area, and the Allentown-Bethlehem-Easton standard metropolitan area comprised of Lehigh, Northampton Counties in Pennsylvania, and Warren County in New Jersey, is such a metropolitan area.

It is by latest estimates the 66th in the country in population.

Q Out of about how many?

A Sales Management, which is a trade book which uses the Census Bureau figures, estimates there are about 300 standard metropolitan areas today. Some of them have not been actually designated by the Bureau of Budget, but they list 300 metropolitan areas, and we rank 66th.

When national advertisers buy today they generally look at metropolitan areas, they don't break out a particular city or newspaper, but rather look at the total [fol. 1082] market. If we, for example, were to considered as the Easton Express and the Easton-Phillipsburg area, we would fall in population somewhere down around 260th, but since we are part of the metropolitan area we sell national advertisers on that basis; in other words, they buy the market, and we as part of the

marketing area along with the other newspapers in the marketing area are considered for the total picture.

Q How do you attempt to sell to the national advertising agencies placing the advertising, newspaper sales?

A Well, we have representatives, Storey, Kelly Smith, which represents some 40 to 50 newspapers throughout the county. We work with them—incidentally, they represent the Allentown newspaper, too, and on this basis we have together in promotional efforts worked with their representatives selling the Easton, Allentown newspapers to cover the total metropolitan area. We call in advertising agencies and sell them basically on this marketing concept. People like Kellogg's and Kraft, particularly the automobile manufacturers, buy on this basis. As a matter of fact, until recent time Chevrolet, for example, would list in their advertisements in the Allentown, Bethlehem and Easton papers all of the dealers located in the metropolitan area. For example, we would run for Chevrolet our dealer in [fol. 1083] Phillipsburg and our dealer in Easton and also include our dealer in Bethlehem and several in Allentown, and each newspaper would carry the same. Now they have done away with the listing and say, "See your Chevrolet dealer—" they are going further—

Q You have a brochure out on how to attract the metropolitan statistical area, do you not?

A We have together with the Allentown newspaper, and primarily working together because of the fact that we have the same representatives nationally, have produced a brochure suggesting that national advertisers buy the Allentown-Bethlehem-Easton metropolitan area, and incidentally, buy the Express while you are there, so we have produced this brochure to sell the metropolitan concept, and it works; it is a thing that does.

Q And what products do you find more—do you find more products being marketed nationally?

A Well, the big thing today, particularly in the—well, companies like Colgate and Procter & Gamble and your grocery products, your food products, are continually coming out with brand-new items, and of course the result is they must promote them, and every day someone is promoting a new national product and using this concept.

Along the same lines, in terms of local advertisers, we have among our top ten advertisers–

[fol. 1084] Q I wanted to get to that, I still want to stick to national advertising. What percentage of total advertising is national advertising?

A About 7 per cent of ours.

Q 7 per cent when you take classified and retail?

A Yes.

Q What is the circulation of the Allentown Call Chronicle?

A Morning and evening combination, somewhere in the neighborhood of 110, 112,000.

Q Does it have circulation in the Warren County area?

A Very little.

Q But it has some in Phillipsburg, does it not?

A It has some in Phillipsburg. It has probably 1,000 in circulation in Warren County, daily.

Q What factors are there that back up your statement when you sell it to national advertisers that it is one area, what factors do you know about?

A Well, there is certainly an interrelationship of buying throughout the whole metropolitan area that people shop from one area to another, and the local advertisers buy it on this basis.

Q Now, let's move over to retail. What percentage of the total is that?

[fol. 1085] A It is about 70 per cent. I am not sure of that figure, somewhere in the neighborhood of 70 per cent.

Q Maybe I should break it up into display advertising.

A Talking about display, it is about 70 per cent.

Q What is the other–you said 7 national?

A 70 display, and the rest is classified.

Q Will you tell us about your sales representatives for this display advertising?

A Well, the–

Q Or the retail?

A We have three in the immediate Easton area, two full-time in Allentown-Bethlehem area, also covering slate belt, which is an area north of Easton, two full-time in New Jersey, and two that work on special activities.

Q Who are your leading advertisers?

A Well, Falk's, which is located in—home office is in Phillipsburg, but they have three department stores and seven food stores in our market.

Q Where?

A Well, one in Phillipsburg, two in Easton, although they are in the townships, in the outlying area, one in Nazareth, I think, Bangor, and I am not sure of the other.

[fol. 1086] Q All right, that is No. 1. What is the second one?

A Pomeroy's is No. 2 and they have a store in Easton, and No. 3 is Orr's, which has stores in Easton, Phillipsburg and Bethlehem. No. 4 is Hess, which is in Allentown. Food Lane is No. 5. They have several stores in Easton and they are now operating in Allentown.

The next are Two Guys from Harrison which are located in Allentown and Bethlehem and do not have an Easton store. Levitt's store, which is an Allentown advertiser; Pace which is a men's store with stores in Easton and Phillipsburg. Sears has an Easton store but they promote both Easton and Allentown locations in their advertising.

Q What is the shopping pattern?

A It is interesting I guess that in most classifications people—well, for instance food, people buy in the immediate area, but when you get beyond that we find that a large percentage of our general merchandise business is going out of the area. It is going to stores in Allentown and the surrounding area. We find in the automotive business, for example, people are buying in Allentown and Bethlehem and in fact we have an advertiser in Langhorne, which draws business from our area.

Q People do shop more for automobiles, is that correct?

A That is one thing that they will travel a bit further for.

[fol. 1087] Q How about clothing for someone from Warren County?

A In my judgment the people in Warren County would shop in Phillipsburg at the shopping mall and in Easton for clothing. Some very well would shop in Hess or Sears in Allentown.

Q How about furniture?

A Furniture is another item where they will travel. As pointed out here Levitt furniture store in Allentown is one of our top ten advertisers. They would shop in Easton. Lipkin's

is again one of our top ten. Fords Furniture, in Washington, New Jersey, is a big advertiser, and people will travel from Easton to Washington, New Jersey, to shop at Fords.

Q How about classified ads?

A Well, here again we have our men covering all the areas. We have four outside salesmen. One covers Easton. One covers the immediate Easton surrounding area, one covering Phillipsburg and the New Jersey area, both Warren and Hunterdon Counties, and one covering Allentown, Bethlehem and the slate belt area.

We have approximately forty classified advertisers from the Allentown area, regular classified advertisers, and we have quite a lot of automobile dealers who run a lot of space with us from that Allentown-Bethlehem area.

[fol. 1088] Q Now let's move over to the area of financial institutions. How about insurance companies?

A Most of the insurance companies do not do a lot of advertisements with us. Nationwide I think is one of the few that is consistent with us.

Q That is largely casualty insurance?

A Yes.

Q How about brokerage houses?

A Here again we have—we are currently running Penn Square Mutual out of Reading and we have run some for Merrill Lynch, Fenner & Smith out of Allentown and, of course, locally Read & Dillon.

Q How about savings and loans, or building and loans?

A Valley Federal Savings & Loan is about the only one that is really with us continuously, and they are one of the best.

Q They have a vigorous advertising policy, you would say?

A Yes.

Q How about banks?

A Well, of course, the Easton-Phillipsburg banks are all good advertisers with us. In addition, we carry a number of outside banks, the Hunterdon County National Bank is a regular advertiser and is quite aggressive in [fol. 1089] their promotion. First National Bank of Milford has been with us. We recently ran copy for the First National of Bethlehem, and, of course, Girard Trust has a branch in Riegelsville and

they are active with us, and we have a Philadelphia–I think it is the First Federal–I'm not sure of that name–First Federal, which have been running bank-by-mail copy with us.

Q What does that generally say?

A It generally promotes savings or bond interest rates.

Q And they mention banking by mail?

A I think recent ads said "You don't have to live in Philadelphia to bank here." That is the approach that they are using.

Q Do you have some banking ads, banking and savings and loan ads that you have brought with you as an illustration;

A I do, but I left them in my briefcase.

THE COURT: You can go down and get them.

THE WITNESS: (After returning) Do you want me to show these? This is Lafayette Trust, family finance, if you are interested in that. First Federal Bank of Milford, New Jersey.

Q I would suggest that you just recite generally for the benefit of the Judge as to what they are and who they are and what appeal they have. I hesitate to put them into the record unless your Honor wants them.

[fol. 1090] THE COURT: I will leave that entirely up to you.

MR. MEYNER: Yes.

A First National Bank of Milford, "Don't let a few miles stand between us", they are talking about service charges on checking accounts, no service charge. Four percent daily interest. Five percent investment savings.

MR. MEYNER: I think I would like to introduce that.

MR. WEINBAUM: No objection.

(Exhibit D-51 marked in evidence.)

THE WITNESS: Five percent savings bond at Girard at Riegelsville. There is a branch of the Girard Trust.

MR. MEYNER: I should like to offer this in evidence.

THE WITNESS: There is another. Four and three-quarters percent on a Pacemaker passbook savings account. This is a large ad for the First National Bank & Trust with a coupon for opening a savings account. This is another item I had with reference to "You don't have to live in Philadelphia."

MR. MEYNER: I offer this in evidence.

(Exhibits D-52 and D-53 marked in evidence.)

Q Go ahead.

A First Federal Savings of Philadelphia. It says you [fol. 1091] don't have to live in Philadelphia, and it offers certificates of savings on which they pay five and a quarter percent on $10,000, five percent on $1,000, for a certificate.

MR. MEYNER: I think this is enough of an offer in evidence.

THE WITNESS: Here is Hunterdon County National Bank. That deals with checking accounts, of course. That is one bank that is considerably out of our immediate Easton area.

(Exhibits D-54 and D-55 marked in evidence.)

Q Do you recognize this one as coming from Easton Express?

A Yes.

MR. MEYNER: I offer this in evidence.

(Exhibit D-56 marked in evidence.)

Q Do you have any other illustrations of enterprises outside of the Easton-Phillipsburg area advertising in the Express? How about restaurants?

A Yes. We have restaurants from the Pocono area. We have some that are in our newspaper from Allentown, Bethlehem area. I don't know the names offhand. We have employment agencies from Allentown and Bethlehem and we have used our newspaper to secure and place applicants.

Q You do have classified ads from Bethlehem and Allentown in the Easton Express?

[fol. 1092] A Yes.

Q Do you also have a connection with the local radio station?

A I personally handle the promotion for the radio station. It is an affiliate company.

Q What is the name of that company?

A WEEX.

Q What do you claim is the radius, the radius covered?

A Our marketing area? Our signal is received throughout the Metropolitan area, what I described as the area, as the three-County Metropolitan area plus into Monroe County, and we do go down into Bucks and Hunterdon Counties with the signals. We have again advertisers from Allentown, Bethlehem and throughout Warren County who use our radio station the same as our newspaper.

Q Do you have any national advertisers?

A Yes.

Q You mean by "national" that a national advertising agency funnels it to you, don't you?
A Yes.
Q As contrasted to local salesmen moving around?
A Yes. We have some automotive accounts that are currently running on the radio station.

[fol. 1093] CROSS-EXAMINATION

BY MR. AUSTIN:

* * * *

[fol. 1098] Q Do you offer regional editions of your advertising as opposed to local editions?
A No, everything runs in our full run.

* * * *

[fol. 1100] FORDHAM BIXLER, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?
A I live in Bethlehem, Pennsylvania.
Q Would this be the Town of Bethlehem, or on the outskirts?
A Actually it is in Lehigh County, but it is in one of the subdivisions just a couple of miles south of Bethlehem.
Q Where do you maintain businesses?
A I have a retail establishment in Bethlehem, a department store, one in Easton, and one in Phillipsburg in the Hillcrest Shopping Center.
Q Will you give us something of your business and educational background?
A I was graduated from Yale in 1925, and have been in the retail business ever since that time. At that time there was one small retail establishment in Easton, which has grown in volume, and of course, in extent since that time. And during that period I was a director of the Easton National Bank for

25 years before I resigned to give all my time to my three stores.

[fol. 1101] Q Would you give us an idea of your annual volume in each of your three stores, or would this be a trade secret?

A Well, let's say that we do in excess of seven million dollars in the three stores, and we are going to hit ten very shortly with the addition to the Phillipsburg store. They run two and a half to three and a half per store.

Q How long has the Warren store been operating?

A That was opened in November of 1963.

Q And in this short time of five years it is now equaling the other two stores individually?

A The original contract was to have a second floor which would double the space if the volume warranted. The volume has nearly equaled one of the two stores, and with the second floor it will pass the other two within the year.

Q This is growth into Warren?

A That's right.

Q What about the shopping pattern in the standard metropolitan statistic area or the Lehigh Valley? Maybe you'd better describe the shopping pattern, what area does it cover.

A Well, for everyone's general information, the Bethlehem store and the Easton store are downtown stores, and we have the usual problem of parking. And with the shopping center store, we have no problem, and because the [fol. 1102] name is known throughout the whole shopping area, which includes Allentown, we had an ad in the Allentown paper yesterday, Allentown, Bethlehem and Easton, we find that particularly during peak shopping periods people drive distances merely to find a place to park easily right at the store they want to shop in.

And as a result, we were amazed to find the extent of the coverage that these people cover to get to the store. On Sundays, where we happen to be open in the afternoon, and Pennsylvania isn't, more than half of them will be from Pennsylvania. During the rest of the week about one-third are from Pennsylvania, and because there is no dominant shopping area east of us, the large proportion of Jersey licenses comes from 25, 30 miles from the east and northeast.

Q As far as Hackettstown?

A Oh, we have a very large coverage in Hackettstown. As a matter of fact, the addition to our charge clientele after we opened the store in Phillipsburg increased radically, Hackettstown, Blairstown, Flemington, all of that area through there.

Q Do you maintain a delivery schedule?

A We do.

Q Do you have that?

A We have had delivery schedules, a very important part [fol. 1103] of our service, for a long time. This is a delivery schedule which has not been changed. It is dated 1966, and it hasn't changed materially since except we have had to expand it somewhat.

MR. MEYNER: I should like to offer this in evidence.

MR. WEINBAUM: No objection.

(Exhibit D-57 received and marked in evidence.)

Q How about the employees in your store, where do they come from? I am talking about the Warren store.

A About half from Pennsylvania, about 40 per cent from immediate Phillipsburg, and they come from Washington, Belvidere, we have them coming—some of our buyers who operate in the three stores live as far as—they live in Allentown, they live in Bethlehem, they live in Phillipsburg and as far east as Bloomsbury.

Q Did you ever have a sample survey of your charge accounts?

A We did. It was very important to us. And because the—prior to last June our ledgers in the Phillipsburg store and our ledgers in the Easton store were separated, it was very easy to do that. The charges came in separately. On a sample month, which we took September 1967—this is actual—3,850 of our Easton area charge customers shopped and charged in our Phillipsburg store, and [fol. 1104] 4100 of our Phillipsburg and Alpha, New Jersey, charge customers shopped and charged in our Easton store, showing the very free flow between the two communities. We did not make a study of those in the Phillipsburg, Easton area that shopped in the Bethlehem store, but there have been many, many times when I have seen customers in the two stores the same day, because I have been there for a long time and I know these people. They shop three stores in one day; they travel very freely, therefore.

Q Do you have any check-cashing services?

A Yes, we do.

Q What do you find with reference to checks?

A Well, that varies, but in general, without looking at the notes that I have for the period, we are just as likely to have checks from Easton or Bethlehem or from Flemington, for that matter, in the Phillipsburg store or the Easton store or the Bethlehem store. Now, during the period of May 27th through June 8th 90 checks from New Jersey firms were cashed in our Easton store, and 33 checks from Easton firms were cashed in our Phillipsburg store, again showing the very free flow between the two business communities.

Q Do you sell any credit checks or do you issue any kind of checks to people?

A Only gift certificates. We had American Express checks, and there is so much trouble with that that we dropped it. [fol. 1105] Q What are the other retail outlets in the area dispensing merchandise somewhat similar to yours?

A Well, Pomeroy's in Easton. Our store in Bethlehem is the only department store in Bethlehem but in Allentown Hess Brothers, and there is a branch in the Whitehall Mall, and Sears has a very large store there. Sears store in Easton is not too large, and that's about it. These are practically full line department stores, not specialty shops.

Q Do you have any business which could be classified as trust business?

A We have set up a long time ago profit-sharing trusts in our Easton store which was followed by profit-sharing trusts in the Bethlehem store. Our realty corporation over there and in the new Phillipsburg store—is that what you refer to?

Q Yes. If the Phillipsburg bank had a fulltime trust officer would there be a possibility that you would turn some business in that direction?

A We would very much like to, and as a matter of fact part of this hinges in our feeling the competitive odds against a small independent retailer. He has to exercise every bit of ingenuity he has to overcome the competitive effect of nationally known outlets and big advertising campaigns, and we do everything we can to have the public [fol. 1106] in the area aware that we are part of the community. One of them is to bank there, to borrow there, to have the bank use every service, give us every service they can, and the minute

the Phillipsburg National has a trust department the trust account for the Phillipsburg store will be moved over there. We have that in our trust indenture. It can be changed.

Q You know they have a trust department there now?

A Well, we would like to have a complete service.

Q How about borrowing? I would assume being in the merchandising business that you borrow over the years?

A When we opened the Phillipsburg store, prior to opening the Phillipsburg store our first move was to check with the Phillipsburg National, because we felt an examination of the statements indicated that they were the one, the only one that could come anywhere near giving us what we needed, and at that time I believe their top line capacity was about $90,000. We took it all. We reduced that. I believe we still have some, but our present expansion is going to require our reentering into the matter of borrowing from some source, and we prefer it to be a local bank. This is very shortly, within the next month or two.

Q What do you think the extent of that borrowing will be?

hundred thousand dollars, and it might go considerably higher.

Q Where would you take that?

A Where would we borrow it?

Q Yes.

A Well, we would borrow every nickel we could from the Phillipsburg bank, and after that it would be a matter of finding out how much we needed and shopping around.

Q It is convenient to split it?

A No. It is very inconvenient. It is very inconvenient. We would like to have—despite the fact that the ownership of these three stores is virtually the same, we do like to have each one a part of the business community even to the borrowing, so if the Easton store needed money we would borrow from one of the banks in Easton. If the Bethlehem store needed money we would borrow from one of the two Bethlehem banks that we are in at the present time.

MR. MEYNER: Cross-examine.

CROSS-EXAMINATION

BY MR. AUSTIN:

Q Mr. Bixler, how do your three stores compare in terms of what goods or services are offered by one that are not offered by the other?

A There is very little differentiation. There will be very little differentiation, practically none, after the second floor is put on the Phillipsburg store, and the reason [fol. 1108] why we are expanding it is because the public has come to know that traditionally we have a certain service and certain merchandise in the other two stores and the demand has been so great that it has been practically a mandate to expand our facilities in Phillipsburg to take care of the traditional business that we do in the other two stores.

Q If I understand you correctly, then, your Bethlehem store would not vary materially in terms of products you sell there from the Easton store, and yet you say you get a good deal of customer flow from the Bethlehem area shopping down in the Easton area. How do you account for that?

A As I indicated in earlier testimony, a good bit is accountable from the fact that there are only two department stores in the Lehigh Valley, traditional department stores that have shopping centers, and the parking is unfortunately the answer to the problem. They do shop down there because the highways are excellent. Time is minimal and they know that the merchandise virtually is the same, so they will come from Bethlehem very readily to shop in the Phillipsburg store, particularly on a Sunday when Pennsylvania is not open.

Q Mr. Bixler, do you recall having supplied Mr. Meyner or any other representative of either the Phillipsburg National or the Second National with certain [fol. 1109] information in regard to the location of your customers?

A I am afraid I don't get that.

Q You made reference in your direct testimony to your delivery schedules, the sources or the areas from which your customers come.

A Right.

Q I have reference here to a letter or memorandum, I should say, dated June 4th, 1968, from Mr. Edward Davidson, credit manager, to Mr. Fordham Bixler, in reference to a

"careful analysis of where our charge customers come from" and the information given here comports with the information you gave on direct testimony. For example he indicates that 3,850 Easton area charge customers "charge in our Warren store." My question is this, this is 3,850 out of how many total Easton area customers?

A Well, these are the charges that were made. Actually the total number of accounts would be about 15,000, but they are not active every month, you see. These are actually active purchases made on charge method, and not every charge customer does that every month. That would account for the distance between the totals and 15,000, more or less total charge customers.

Q In terms of the next information that you gave, it says"4,100 of our Phillipsburg and Alpha, New Jersey, charge customers shop and charge in our Easton store." [fol. 1110] What would be the total number then of your charge customers in Phillipsburg and Alpha, New Jersey?

A The total ledgers for the two stores are approximately 15,000, and I would have to guess that the proportion would be about one-third of them are in Phillipsburg and two-thirds are in Easton. I don't have the precise figure on where the total ledgers are. I do know that when we opened the Phillipsburg store that the New Jersey charges came to a great extent from down east in New Jersey. At the same time our traditional customers from Easten and Bethlehem reside there, too.

Q Do you know, sir, the total number of charges for the month that you had for the month of September, 1967, in your Warren store or your Hillcrest shopping center store?

A No. I don't have that.

Q Do you know the total number of charges that you had at your Easton store?

A Well, now, wait a minute. The testimony I gave was that in the month of September 3,850 of our Easton area charge customers shopped and charged in Warren and 4,100 of our Phillipsburg and Alpha resident customers charged in Easton. Now, how many that were living in Phillipsburg charged in Phillipsburg and how many that lived in Easton charged in Easton I don't have those figure, but my figures [fol. 1111] show how actively they shopped across the State line.

Q In the same context you testified in regard to a sample analysis of your deliveries during the week of May 27th through the 1st of June, and you indicated that twenty-five purchases made in the Warren store were delivered to Pennsylvania.

MR. MEYNER: He didn't testify to that sheet. If you want to give him the sheet, go ahead. He only testified, your Honor, about checks.

THE COURT: I recall.

Q You testified, I believe, Mr. Bixler, in regard to the credit requirements of Orr's department store, that you felt you needed around $200,000 or more, I assume, to open a line of credit sometime in the foreseeable future, is that correct, sir?

A Very definitely.

Q You also testified as a matter of policy you generally prefer that each of your stores satisfies its credit needs in the particular city or town in which it is located.

A For policy and convenience.

Q Well, approximately what percentage of the $200,000 that you mentioned would be needed by the Phillipsburg or Warren store?

A All of it.

[fol. 1112] Q Do you happen to know what the present lending limit of the two defendant banks happens to be separately?

A I don't know. My understanding is that Phillipsburg National has a lending limit of about $110,000. When we first borrowed it was $90,000 and we took it all. What the other bank has I can only conjecture from what I heard, that that would range to a limit of about $220,000, so they must have about $110,000 also. I don't know for a certainty.

Q Are you aware that you could actually at this moment satisfy your $200,000 credit requirements by resorting to both of the defendant banks for this credit requirement?

A It would not be the traditional policy in Phillipsburg, and also we may need more than that. We may need more than that.

* * * *

FURMAN DENTON, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?
A Bernardsville, New Jersy.
Q And where are you employed?
A I am employed by the First National State Bank of New Jersey in Newark.
Q In what capacity?
A I am executive vice-president and cashier.
[fol. 1113] Q Will you describe your educational and banking background?
A Well, I was graduated from Jefferson High School in Elizabeth. Upon graduation I moved to Newark and gained employment as a clerk with the Clinton Trust Company of Newark. I was there until 1933, and then obtained employment at the National State Bank in Newark now known as the First National State Bank of New Jersey.

There I started as a clerk and worked up through various departments in official capacity to my present position. My educational background, I was a graduate of the American Institute of Banking holding a standard certificate. I am a graduate of New York University with a Bachelor's degree in banking and finance.
[fol. 1114] Q Have you been involved in mergers?
A Yes, sir; mergers and acquisitions.
Q The Phillipsburg National Bank & Trust Company is a correspondent of your bank?
A Yes, sir.
Q And has been for some time?
A Yes, I believe about five years.
Q And generally what sort of mergers have you been exposed to?
A Well, they have all been with my bank, the First National State, as the acquiring bank. And we have acquired some nine other banks of varying sizes.
Q Have you been familiar with some other mergers by other institutions?
A Yes, sir. We have frequently been interrogated by people in the banks contemplating a merger or consolidation.

Q In your many years of banking and in your exposure to mergers, have you seen a merger result in lower interest rates for the savings deposits?

A No, sir; I know of no single instance.

Based on that similar experience, and on your knowledge, do you know of any merger which resulted in higher interest rates paid by borrowers?

A No, sir.

Q Did you have a chance to examine the application [fol. 1115] of the two banks just prior to the time it was filed, or about the time it was filed?

A Yes, sir.

Q What would you say about that, generally?

A As to the terms?

Q Yes.

A Well, I thought that they were eminently equitable, that there did not appear to be any premium. And the sole objective appeared to be to put together two banks on a proportionately equal basis.

Q You have had a chance to look at the statements of both banks?

A Yes, sir.

Q What do you think would be the effect of the merger?

A Well, I personally believe it would be beneficial, from the various aspects.

Q Would you outline those various aspects?

A Well, it would certainly be helpful in the way of the economies of size, that is, there could be certain operating costs reduced by the combination of the banks, which would permit broadening of services, and also filling a need which apparently exists for middle management. There appears to be a decided lack in both instances of middle management.

[fol. 1116] THE COURT: Excuse me. Did I understand you correctly, did you say middle management?

THE WITNESS: Yes, sir.

THE COURT: And what is middle management?

THE WITNESS: Well, middle management would be in the area between the top management, the decision-making management, and the junior officer or senior clerk level, supervisor.

THE COURT: All right. Go ahead.

Q Would you classify as middle management someone that had the commercial and industrial loan department?

A Yes, sir; that would be a specific example.

Q Or mortgage department?

A Yes, sir; another. And installment loans—lending officer.

Q Or trust officer?

A Yes, sir.

Q What benefits, if any, would this have to the community?

A Well, let's take the commercial and industrial loan officer position first. A well trained and capable lending officer of that type would have a completely positive approach, generally speaking. His endeavor would be to seek ways and means of making loans, and creating a source of credit to worthwhile and economic endeavors, as contrasted [fol. 1117] with what is frequently encountered as the run of the mill glass-eyed banker approach of finding ways and reasons to turn it down. So an imaginative and capable lending officer can do a great deal to advance the economic enterprises in the areas served by the bank.

Q How about a mortgage man?

A Well, similarly here, this is a specialized field and requires special technical know-how, and the various laws relating to real estate financing. And I am sure that the bank could find other outlets for real estate financing with a properly trained real estate lending officer.

Q Isn't there a development in the multiple dwelling type of—

A Yes, sir; that would be an example. And there are others. Construction loan financing is another important area, which encourages building to serve the needs of the community, both residential and commercial.

Q How about the availability of trust business?

A Well, I am not thoroughly familiar with the area, but I am acquainted with the fact that there has been good economic growth there. And I think there are opportunities for the development of trust business in that area. I am sure that now most of it has to go across the river, or to Philadelphia, or possibly New York.

Q How about certain phases of computerizing?

[fol. 1118] A Well, I don't think there is any question that a computer is in the future of practically every bank. The timing, of course, could be a matter of considerable difference of opinion, but I don't think the end result is.

Now, the computer installation—there are certain minimum costs involved. And they obtain whether you process, for example, 5,000 or 10,000 items, or whether you process 100,000. So that a computer installation in each of the two banks in question here would certainly be considerably more expensive than if those banks were combined; the same kind of an installation could serve the needs of both.

Q Would there be any advantages with respect to the obtaining of personnel?

A Well, I think specifically there would be. As you have a larger institution, as the employer, the various programs related to that employment can be enlarged. That has been the experience generally. To give a specific example, larger banks can offer educational benefits, that is, the financing of further study by their junior management, or middle management, which is not generally the case in rather small units. This would be a step in that direction, I feel.

Q Is there difficulty in getting employees at this point?

A Yes, sir; and that difficulty is likely to become more [fol. 1119] pronounced, in my opinion.

Q And the ability to attract employees of that type are better with respect to what? Well, if you have two banks, what is the difference between two separate banks and one merged bank?

A Well, basically that the larger the unit the more opportunity there is for advancement to a would-be employee, an applicant, considering the bank as a place of employment. He would certainly have more opportunities for advancement with the larger bank. And with the trend toward specialization in such larger banks, it becomes essential, as the bank grows, to have specialists. In the old days the platform officer put on his trust officer's hat at four o'clock and then he was the Trust Department. Now, that was good and sufficient way back when. But the need now is being felt for men who are specifically trained as trust officers.

Q You deal with correspondent banks, do you not?

A Yes sir; I do.

Q What is the general attitude with respect to participation?

A Well, they are utilized in quite a number of cases, because the demands locally exceed the bank's lending limit, which I believe has been mentioned before. So that the logical thing for the local bank to do, to try to hold on [fol. 1120]

to the business, is to find a correspondent that will take the excess of the loan under consideration.

Q Well, aren't large banks more willing to participate when there is a trained commercial and industrial loan officer?

A Yes, sir; they would be. But prior to that, the correspondent bank—that is, the customer of the larger bank, the banker, the small banker—in offering a participation is not always able to do it expeditiously because the larger bank has lending problems of its own, and such participations may be offered at a time when the demands on the bank being asked to participate are such that they would not consider such a particpation, at that time.

Q In other words, if you went into a participation as a larger bank, there might be occasions when you would withdraw because of other credit needs.

A That is correct, because of the demands on your own direct customers. Now, to answer your question specifically, the existence of a capable lending officer in the bank that is offering a participation to us is quite a comfort. In many instances you encounter situations where the bank offering the participation doesn't even have what is considered to be a normal credit file. So that the existence of a competent lending officer precludes, in a large measure, the possibility of inadequate credit [fol. 1121] information on the part of the basic lending bank.

Q Would you say it is better to have a larger capacity than to participate, for the bank that has the applicant?

A Yes, sir. There have been instances where, over the years that I have been acquainted with, where the small bank that participated its loans out eventually ended up losing the business. The bank that participated finally weaned the fellow away. In those instances where the borrower showed excellent growth, he soon outgrew the local bank, and the correspondent bank was not loathe to take the business, the excuse being: Well, you fellows couldn't handle it, anyway.

Q Or sometimes didn't have the confidence.

A Or didn't have the confidence, that's exactly right. When I said outgrew the local connection, I was implying that as part of it.

Q You have been in contact with many correspondent banks of a similar size to this?

A Yes, sir.

Q Would you be willing to project the future of these two banks without the merger?

A Well, first let me say that generally the future of the small bank, according to considerable literature in the trade, in our industry, banking industry, is rather [fol. 1122] glum, the outlook, because of the problems of automation, the problems of personnel, the problems of other facilities, competition. So that it is not unusual to find authorities in the field of banking pointing this out, that there is a need for growth and that the small bank would reach a position where it is no longer competitive and would be forced to consider some way of fortifying its competitive position. And this merger, I believe, would do just that.

* * * *

[fol. 1123] CROSS-EXAMINATION

BY MR. WEINBAUM:

Q I take it from your last remarks, Mr. Denton, that these small banks are not necessarily peculiar in their lacking of certain middle management specialists?

A I don't know what you mean by "peculiar." Do you mean unique?

Q Because they don't have these. Is it not a fact that most of the banks that you are familiar with in the 15 to $25 million size categories would be lacking a specialist in commercial lending?

A It is a common problem that they are all faced with.

Q Do you know how Phillipsburg National's mortgage lending is presently done?

A No, sir.

Q Do you know how their trust business is presently handled?

A No, sir, except to know that they have very little.

Q You have no way of knowing, then, whether or not the way they handle it now is the way that the vast number of banks their size would be handling it?

A Well, I would say that in all probability they are handling it the way the others do, and the way I typify it as being putting on your trust hat at four o'clock.

Q If a small bank, Mr. Denton, wished to grow from within, do you think this is feasible or possible in [fol. 1124] today's banking picture?

A Do you mean personnel-wise, growth from within?

Q From within.

A I think it would be extremely difficult.

Q There are banks that do do it, though?

A None to my knowledge. There are some that are attempting it, but the results are inadequate; hence, the searching for talent constantly, and many of the smaller units are precluded from canvassing the colleges because of the relatively high demands of our college graduates.

* * * *

[fol. 1125] Q Do you handle any participation for your correspondent bank?

A Our bank does, yes, sir.

Q Do you yourself handle any of these?

A A few.

Q Do you know in what percentage of the cases that you are called upon to participate a loan with a small bank that you turn them down?

A Well, there are numerous cases where they are turned down.

Q Would you say that in the majority of cases they are turned down?

A I wouldn't say in the majority. This is a subjective valuation on the part of our people concerned with the thing as opposed to the subjective valuation of the local banker.

Q Isn't one of the inducements that you offer to sign up a correspondent that you are going to help him in matters of this kind?

A That's right.

[fol. 1126] Q I will withdraw the question. How big is your bank at the present time, sir?

A Well, in the area of $800 million, total resources.

* * * *

[fol. 1127] A. CHESTER WALTON, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?

A Blairstown, New Jersey. Do you want the street? Hoagland Road, Blairstown, New Jersey, would be adequate.

Q Will you state your educational and banking background?

A After graduation from high school, I started in a large New York City bank in 1911. I was there most of the time, until I enlisted in the Navy for World War I. Upon release from the Navy I went with the Federal Reserve Bank of New York. I later became an examiner, and subsequently in the bank relations department. For the last nine years of my work there I was head of that department. Since retiring I have helped to organize two national banks. I am still vice president and director of the Madison National Bank. I have graduated from the Graduate School of Banking at Rutgers.

Q Are you familiar with what was described as the standard metropolitan statistical area, Warren, Northampton and Lehigh Counties?

A Yes.

[fol. 1128] Q Do you think that's a shopping area?

A Yes.

Q By what reasoning?

A First of all, the stores, the people in the surrounding area have no other place to shop than there, and bank as well. I live 29 miles away from Easton, but I buy my clothes there and I buy most of my things there. My wife does likewise. We also shop as far away as Allentown, Hess Brothers.

Q Do you know both of these banks?

A Yes.

Q Were they part of your territory?

A They were.

Q What do you think the effect of a merger would be?

A Well, it would create a larger institution, naturally. It would enable you to, the resultant bank, to departmentalize and to obtain high grade personnel to head the various departments, to give better service to the people in the area. And the area is in a growth area, as you know and I know.

Q What about the growth area?

A Your competition is right across the river, and as far out as Allentown and down into Flemington, and that's stiff competition, and you even get competition from New [fol. 1129] York. With Hoffmann-LaRoche contemplating four $40 million units in Belvidere alone, they propose to start the first one very shortly I understand from the papers, that whole area can't help but move ahead. And this bank as a merged institution should take a very good place in that growth.

Q How about the loaning capacity?

A Of course it is going to increase their lending capacity and be able to handle customers of larger size.

Q Do you think it is going to affect the rate that they will pay on passbook savings?

A No, it hasn't in other institutions and I don't see why it should here.

Q Do you think it is going to cause the borrower to have to pay more interest on loans?

A No. Conversely, it is going to be more of a competitive basis in there, and I can't remember any place that it has ever changed either of those figures.

MR. MEYNER: Cross-examine.

* * * *

[fol. 1131] JAMES PATERSON GREER, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Mr. Greer, where do you live?

A 635 West Lafayette Street, Easton.

Q And what is your present position?

A Executive vice-president and director of Lafayette Trust in Easton.

Q And this bank has how many branches?

A We have three offices and a total of two branch offices.

Q Will you give us your educational and banking background?

A I was born and raised in Bradford, Pennsylvania, attended public schools there, graduated from Pennsylvania

State University, entered service with the Federal Reserve System of Philadelphia in July of 1957. Worked with that organization for approximately eight years. I attended various banking schools, including the graduate school of Rutgers University, NABAC, University of Wisconsin, and various Federal Reserve internal training programs in automation, bank credit and banking operations.

Q Do you have some legal background?

A I am a student at Temple University Law School.

[fol. 1132] Q How large is your bank?

A Approximately thirty million dollars.

Q What is your lending capacity?

A $210,000.

Q You are a State-chartered bank?

A We are.

Q What is your trust business?

A Our trust total is approximately three million dollars worth at the moment.

Q What other banks do you consider vying for deposits for loans with you?

A Well, of course, we actually would consider all banks in our immediate trade area, and in addition to that the New York banks and the Philadelphia banks are aggressive competitors in the loan area, the deposit area and the trust area.

Q What do you consider as your immediate trade area?

A Our immediate trade area is all of Northampton, Warren and Bucks Counties, including the Riegelsville area where the Girard Trust of Philadelphia has a branch, Lehigh County, and some parts of southern Monroe and southern Carbon County to the north of us.

Q Have you been able to break down the proportion of deposits in the Warren area as compared with others?

[fol. 1133] A We have not

Q Do you have a substantial number of loans in Warren County?

A The degree of loans or the number of loans I could not testify to.

Q You do have mortgages?

A We do have mortgages. We do have commercial loans. We do have employees who live in Warren County. It is part and parcel of the Easton trade area.

Q But you are bidding with all of these banks in what you call this immediate area for deposits and loans?

A Yes, sir.

Q Will you tell us something about the mobility of labor in the area?

A Well, it is quite obvious, our small bank in and of itself has employees who reside in Nazareth and Phillipsburg, New Jersey, Bethlehem, Bangor, some thirteen miles to the north of us, south of Riegelsville, so if this is true in our own institution it is obviously true in companies that employ far greater numbers than our own.

Q How about the shopping pattern?

A The shopping pattern of the people in our area, they shop in Allentown and they shop in the Whitehall Mall, and they shop at the Plymouth meeting town toward Philadelphia [fol. 1134] and Norristown area. They shop in the Phillipsburg shopping area, Hillcrest. There is no question but that they cover the entire area.

Q You mentioned the efforts of banks outside of your area to attract business. Can you give us some indication of what the nature of that activity is?

A It is not unusual for a correspondent bank, representative out of a New York bank, to call on our institution at approximately 9:30 on a week day and having concluded his business with us make a direct solicitation to one of our prime depositors and customers on the commercial side.

Q How about the degree of vying by banks within the district?

A Among ourselves or the banks immediately related to one another?

Q Yes, the ones in the area.

A There is direct head-to-head competition with Bethlehem banks and Allentown banks and the bank in Northampton—there are two now. The bank in Nazareth, and, of course, the banks in Phillipsburg.

Q Do they make an effort to go out into the entire area that you described?

A Do all of them make the effort, no, sir, they do not.

Q Which banks do you say make the effort?

A I would say that the greatest effort is probably made [fol. 1135] by the Union Bank of Bethlehem, also the Easton

National Bank who at one time—whether they still do or not—had a man knocking on doors in the entire area, and ourselves. The competition is not as great as it could be.

Q Where do you advertise?

A We use the Allentown newspaper on occasion, not very often. We use the Easton Express mostly and both radio stations WEEX and WEST in our own town. The Labor Herald, all these trade publications that are published locally.

Q You say that you have a three million dollar trust business. Do you mean that this is trust business in the area that you described?

A There is no doubt in my mind that there is trust business in the area that I described.

Q What are you about to do with respect to it?

A Well, we have already within the past year and a half established a common trust fund which will permit us to service the smaller types of trust business which our big city friends are not too interested in because it is not quite as profitable as they would like to have and in addition to that we have just recently secured permission from the Commissioner of Banking and Insurance of New Jersey to conduct a trust business.

Q Where do you envision your prospects?

A We envision our prospects in that trade area that I [fol. 1136] described.

Q What type?

A Well, we will be after personal trust business as well as corporate, and small pension funds.

Q What about the small pension fund?

A We have had two or three in the past. We have lost some because we were unable to do the job that that particular account thought we should be doing. Basically we lost on performance.

Q Will you describe the facilities of the banks in this area that you described for commercial and industrial loans?

A The facilities? I don't follow.

Q Or the technique, or the personnel engaged in this work?

A Well, unfortunately—maybe fortunately for us—some of the banks who have been successful in attracting management talent have secured people with credit-type backgrounds. I am thinking of one man in particular. When they broke this man

in in their bank it was incumbent upon him to become associated with the administration of the bank rather than commercial and industrial loans per se. Had he been able to put his best talent to work in the area in which he was most familiar I am certain a lot of business of over plus loans that went to Metropolitan areas would [fol. 1137] have remained in our immediate area either by participation or handled by the particular bank.

Q Are you familiar with both the Phillipsburg National Bank and the Second National Bank?

A Reasonably so.

Q What would you say would be the effect of a merger so far as serving the community is concerned?

A I think they would be better able to serve the community in most all banking respects. I would invite the merger simply because I think they would become a more significant competitor of ours. I feel—I might preface my remarks by indicating that I am not a native of the area. I am an outsider, and I don't think that the banks within the trade area we described have been anywhere near as aggressive as they should have been. I feel that there is an apathy that exists in our particular trade area and with stronger banks and more talent in the managerial area that the public can do nothing but benefit thereby.

Q Will you describe more particularly the ways that this merger will benefit the operation of the bank and consequently the community?

A I would expect that they would be able to attract, as they have indicated that they would like to, more able people in more specialized areas rather than one man wearing [fol. 1138] many hats. They would perhaps be able to fill this middle management gap spoken of by the previous witness. They would become more aggressive competitors, advertising-wise and they would hopefully do some of their banking business by direct customer contact with the customers at his point of business rather than at the bank.

Q Have you had experience in trying to attract personnel?

A We have been.

Q What you talk about in the way of what two banks could do as a merged bank, couldn't this be done by the two individual banks?

A Attract this personnel? It is questionable whether they could attract and pay the type of personnel they would need, particularly in the trust business.

Q Well, would you expound on that? You heard it said that they would need a separate C & I officer. Will you describe the advantages of that?

A Well, the advantages that previously were stated are quite obvious. Credit files in smaller institutions—and I don't speak necessarily of either of the banks who are attempting to merge, but generally speaking the credit files in smaller institutions leave much to be desired. Hopefully a credit officer would correct that situation. A qualified commercial loan man would be better able to resolve the credit [fol. 1139] needs of the borrower rather than on the traditional means that country banks have so often handled the situation.

Q How about a mortgage officer?

A The same thing.

Q Have you endeavored—what do you think of automation prospects?

A I think that there are alternatives to small banks, and I think that the price is not prohibitive, either as an on-premises installation or off-premises with a correspondent bank. There are, as previously stated, certain economies of scale. Also whenever you go off premises you obviously leave yourself open to an off-premises operation having access to your records, which is not always desirable when you are in a competitive world in which we exist today. We in our own institution have gone off premises hopefully as a stepping stone to on-premises computers. It is costly. Manpower is the critical point.

Where do you get them? This is the problem, and if you had them in the first instance it is very conceivable that a bank of some greater resources has been able to siphon them away from you in the interim while they were growing up.

Q What are the advantages in increasing lending capacity? [fol. 1140] A There again I think it is quite obvious. We have seen it not particularly in our area but in the State of Pennsylvania in the rural areas where the needs of the farmer have expanded to the point where the rural banks cannot handle an $80,000 farm equipment loan. As a result he has to go to a nearby city or Metropolitan correspondents to get

help in this area, and whenever you do this you lay that account open to inroads by the correspondent or the city bank.

[fol. 1141] Q Well, do you lay yourself open as much if you have a skilled C&I man?

A Obviously, if you can handle the credit needs of that particular individual, the exposure is not there any longer.

Q Do you find that your services are vied for by institutions other than banks?

A Oh, very definitely.

Q Will you describe some of these other enterprises?

A Well, we have a policy in our bank of reviewing all checks that are drawn on our institution of over $2,000. And most of these checks can be leafed through quite readily. They are payroll checks and things of that nature. But there are a great number of them that are made payable to brokerage houses. We have accounts with brokerage houses that are quite sizeable. And the reason they are sizeable is because our customers are making purchases in the stock market.

Q Well, No. 1, you have got stock purchases.

A We have stock purchases. We see a flow of funds leaving us for insurance purposes. We see insurance companies participating in loans to our customers. We like to think they are our customers. They are also the insurance companies' customers at this point in time. Small loan companies come into our area and take off loan business.

[fol. 1142] Q How about finance companies?

A Finance companies. I can give you a case in point there. The bankers in our area are quick to point out the fact that we do business with a Phildelphia correspondent who has a branch in Riegelsville. They fail to note, however, that there is a small loan company within the corporate limits of the City of Easton that has a direct relationship with the First Pennsylvania Company in Philadelphia, on a rediscount basis, and is supported to a very substantial degree by that bank.

Q Did you mention savings and loans?

A Savings and loans, quite obviously. Credit unions. The degree of competition from credit unions I am not exactly familiar with, other than the fact that I have had some exposure to credit unions and it is growing.

Q How about pension funds?

A Pension funds to a lesser degree in our area.

Q Do you feel that these services are being offered by others and that you have to match them?

A We either have to match them or give a more attractive alternative; yes, sir.

Q Have you been through any mergers or observed any mergers?

A I have observed mergers.

Q Both in your experience as an examiner and–

[fol. 1143] A As a bank examiner.

Q Have you seen any mergers where the result was to reduce the amount paid on savings deposits?

A No, sir.

Q Have you ever observed, as a result of a merger, an upping of the interest rate paid by borrowers?

A No, sir.

* * * *

CROSS-EXAMINATION

BY MR. WEINBAUM:

Q Mr. Greer, when did you join Lafayette Trust Bank?

[fol. 1144] A In May of 1965.

Q And can you describe the circumstances of your joining the bank.

A We examined the bank, the Lafayette Trust Bank, as representatives of the Federal Reserve Bank of Philadelphia, as of the close of business December 31, 1964. Therefore, we came into the bank some two or three days after the first of the year. I believe the first of the year fell on a Saturday or a Sunday. But, anyway, it was the first week of January 1965.

Having gotten to the point in our examination where we quizzed bank's management as to what they proposed to do about management's succession, I proposed this question to the then incumbent president. And he point blank told me that he was looking for people. And he asked whether or not I knew of anybody, or there was anybody in the Federal Reserve System who might be interested. And I said, "Well, you never know," things of this nature. He said, "Will you

put that in your report and let the authorities know that I am in the market for somebody?"

And I facetiously said, "Like hell I am going to put that in the report. This looks like a pretty good opportunity and if I put it in the report every examiner in Philadelphia will be up here to see you."

I did put it in the report. After he had [fol. 1145] received the completed examination, sometime in April, he contacted me and indicated that he had the report in hand. And he wanted to talk to me about a possible position with his bank. And he did not want to do this until the report had been filed, so that there would be no reflection on what I wrote in that report. And the results are evident.

Q And you went to work for the bank in around April or May of 1965?

A May of '65; yes, sir.

Q Can you tell us, Mr. Greer, what your starting salary was when you joined the bank?

A My starting salary prior to joining them or what I came there for?

Q What you came there for.

A $11,000.

Q And were you offered any sorts of stock options, or bonuses, or other fringe benefits of import?

A Of a financial nature, I was offered nothing.

Q Why did you decide to come to work for Lafayette Trust Bank?

A I had examined the bank, No. 1. The president was then 69 years of age. The No. 2 man, and No. 3 man, and No. 4 man, and No. 5 man, in my opinion, were not that heavy that, were I to spend a few years over the target, that I couldn't supersede them. The average age of the [fol. 1146] Board of Directors was then 72. It was obvious to me that there would be changes in that Board—in my opinion, for the better.

The economy of the Lehigh Valley is growing by leaps and bounds. The competition, as I have previously stated, was not what I thought it should be, and I thought, and I still think I know the reasons why. Therefore, I was of the opinion that a young banker with relatively limited background would be more than able to cut the mustard in this particular situation.

Q How large was the bank when you joined it, Mr. Greer; As of year-end '66 it was indicated you were about 24.3 million.

A Well, I am guessing that as of the examination date, 12-31-64, it would have been approximately 18 million. Correct me if I am wrong.

Q So as I understand it, you looked at this opportunity as a challenge.

A Very definitely.

Q And did you have any thoughts about settling in the Easton-Phillipsburg area as opposed to the City?

A Yes, to some degree. Here again, the mobility of the people in our area and the mobility of people in general I think is quite obvious. While we came to Easton, we are not married to Easton. And while we left the City, [fol. 1147] it doesn't mean we wouldn't go back to the City, if the opportunity presented itself. The circumstances are such that I am not particularly excited about going back to any metropolitan area.

Q You are very happy in the Easton area, as far as living conditions in a smaller city.

A Yes, sir.

Q Have you been accepted as an outsider in the City of Easton?

A This is a myth, I think, in our area. It depends upon the individual. Some people will never be accepted, because they are not the type that are accepted anywhere. I don't think that there is any insurmountable wall in Easton or any other town.

Q When you came to the bank, did it have a trust department?

A Yes, sir.

Q Did it have a full-time trust officer?

A No, sir.

Q Do you have a full-time trust officer now?

A We do not.

Q Are you looking for one?

A We are.

Q Have you done any expanding of your facilities at the bank since you got there?

[fol. 1148] A We are nearing the completion of an approximately $350,000 renovation.

Q And does this include extended trust department facilities?

A It does.

Q How many people do you have in the trust department presently, officers?

A Well, it is a misnomer to count bodies that devote time to trust activities. We have one young lady who handles our complete payroll operation, as well as its trust work, accounting work, records keeping. We have an assistant trust officer, who is also the treasurer of our bank. So you can see that he wears more than one hat. I would be accurate in saying that we might have one and a half to one and three-quarters people on a full-time basis.

Q When you came to the bank did you have a commercial lending officer, full-time?

A Here again it was a division of duties proposition. The commercial lending officer, as we know him in Easton, is also the installment lending officer.

Q Do you presently have a full-time commercial lending officer?

A The capacity that I just described still exists.

Q Has this been a particular handicap to you in the advancement of your bank, the fact that you do not have [fol. 1149] a full-time man in each one of these fields?

A I think that my supplementing this man has helped greatly.

Q And at some point as you get larger do you hope to add a commercial lending officer?

A We certainly do.

Q Could it be that the man presently sharing these duties might be given exclusive responsibility for them?

A He could be given overall supervision, yes.

Q Do you have a full-time mortgage officer at the present time?

A We do.

Q How long have you had him?

A How long has he been the mortgage officer or how long has he been with the bank?

Q How long has he been the mortgage officer?

A I can't tell you. He was there when I got there.

Q He was the full-time mortgage officer?

A Yes, sir.

Q When the bank was $18 million.

A Yes, sir.

Q Are you now licensed to do business in New Jersey in the trust field?

A That is correct.

[fol. 1150] Q And you have deposited approximately $40,000 with the state to conduct this business?

A Well, no. I don't think that is the requirement, is it? I think it's securities.

Q You deposited securities?

A We have deposited the necessary securities, yes.

Q In approximately that amount?

A Yes, sir.

Q Mr. Greer, when you came to the bank did you have any off-premises computing facility, that is, did you do any of your accounting work with data processing?

A We did not.

* * * *

Q You did not do any data processing at the time of your arrival?

A We did not.

Q And you are presently doing it with a bank elsewhere, is that correct?

[fol. 1151] A That is correct.

Q How big was your bank when you went off premises?

A Well, we went off premises on our payroll accounting the first pay period in January this year. So whatever our footings were the year-end '67 is how large we were. The first of February we went off premises with approximately 6,000 savings accounts, in our savings operation. And on the 15th of February of this year we went off premises with our demand deposits accounting.

[fol. 1152] Q How many branches did you have when you joined the bank?

A We had one.

Q Since you joined the bank you have added one additional branch?

A Yes.

Q Where is that branch located?

A In the College Hill sector of Easton, near Lafayette College.

Q Your second branch is located where?

A That–

Q I am sorry. The other one.

A The other branch is located in Palmer Township, approximately midway between Easton and Bethlehem.

Q Are you presently handling corporate trust accounts?

A Yes, we are.

Q And can you describe some of the accounts that you are handling? That is, the types of accounts, not the customers.

A Well, trustee accounts for municipalities on bond issues and Authorities such–we handle the trust, we are named in the trustee agreement.

Q Do you handle any pension or profit-sharing trust accounts?

[fol. 1153] A Yes, very few.

Q But you do handle them?

A Yes.

Q Does your bank personally solicit business?

A We do.

Q Where is this solicitation conducted, for the most part?

A For the most part it is conducted on the premises of our bank.

Q You don't endeavor to get out in too many instances?

A Not in too many instances.

Q Mr. Greer–

A We do endeavor to.

Q As a practical matter do you get out very often?

A No.

Q Mr. Greer, where do you say you derive the greatest portion of your business from, what locality?

A One area as opposed to another?

Q Yes, sir.

A On the Pennsylvania side of the river.

Q And would the greatest portion of that business be derived from Easton, in your opinion?

A It would be.

Q Do you consider yourself at the present time to [fol. 1154] be a far different bank from the time when you first came to it?

A In any particular respect?

Q In respect to the entire operation of the bank.

A Yes, sir.

Q Do you feel that your size has inhibited you to any great extent to making the progress that you have made to date?

A We have lost business due to the fact that we couldn't service some of the accounts that I think we could have successfully attracted.

Q Do you feel that there is a promising future for your bank in this area?

A I hope so.

Q In your opinion, do you feel that there are many men connected with banking who, like yourself, would be interested in an opportunity such as you have had at this bank?

A Are there many?

Q Yes.

A I don't know.

Q You do indicate, though, that you didn't want the fact that this bank was looking for some new management to get into the Examiner's report?

A I indicated that that did get into the Examiner's report. I think I stated that—I said this facetiously to [fol. 1155] the then encumbent president, and then proceeded to include it in the report.

Q Has it generally been your experience as a bank examiner that many banks the size of the Lafayette Trust bank, the two Phillipsburg banks involved in this merger, do suffer from a lack of middle management specialization?

A I believe this to be generally the case, yes.

Q Do you feel that small banks the size of yours and the defendant banks can compete effectively if they desire to do so?

A I feel that our bank, which I happen to be most familiar with, cannot hope to compete unless we obtain in the very near future a fifty million dollar total footing position.

Q Do you believe you will be able to do this apart from the merger?

A I don't believe we will be able to do this on normal growth. I think we will need a merger ourselves in order to accomplish this objective in the time table that I have indicated.

Q And when do you feel that this fifty million dollars should be attained?

A Not later than 1972.

Q Have you given thought to the obtaining of additional capital for the bank?

[fol. 1156] A We have obtained additional capital, and within the past year and a half.

Q How much additional capital did you obtain at that time?

A We sold 5,500 additional shares of capital stock at fifty dollars a share, which is what, $275,000. This was in order to accomplish this renovation program which I previously described but, of course, as you are well aware, there are several ways of obtaining capital. At the time we started on this project we approached both the Federal Reserve System and the State Department of Banking, to whom we are responsible, as far as the supervisory agencies are concerned, and the Federal Reserve System said, "There is no problem whatsoever, you can spend as much as $500,000 and we will interpose no objection; in other words, you are well capitalized."

We knew this in the first instance. The State Department of Banking, unfortunately, in our opinion, is antiquated somewhat in their thinking, and was of the opinion that perhaps we should obtain additional capital, which we did. There were other alternatives, such as capital debentures, sale lease-back of our building. We explored these. We didn't feel we had time to win the argument, so we sold the stock, and we sold it within a relatively short period of time, ten days, fifteen days.

[fol. 1157] Q You sold it in the community of Easton?

A We sold it, well we had preemptive rights to our current stockholders and the overplus went to local citizenry.

Q What was the lending limit of your bank when you got there?

A I don't know whether it was a hundred and fifty or a hundred and eighty.

Q And presently it is over $200,000?

A Yes. And within a month it will be $225,000.

* * * *

REDIRECT EXAMINATION

BY MR. MEYNER:

Q I think you said in answer to Mr. Weinbaum's question that one of the reasons why you took this job was that there was no competition and you knew the reason why. Will you explain that more fully?

A As you may be familiar, in the State of Pennsylvania there is quite a bit of merger activity taking place, and the law states that a bank domiciled in one County can only branch into contiguous Counties. If you were to look at the map of Pennsylvania you could readily see that the bulk of the merger activity has taken place in all parts of the State, and there is a noticeable absence of mergers in Northampton County, and I would attribute this to the insulating qualities of our particular position. And the insulation comes from the river which divides us from New [fol. 1158] Jersey, and it comes from Bucks County to the south of us, which is a buffer County between ourselves and the more aggressive banks in Philadelphia, and it comes as a result of a buffer County to the west of us, Lehigh, which insulates us from the more aggressive competition in Berks County, it comes from the buffer Counties of Carbon and Monroe which insulates us from the more aggressive competition in the northeastern part of the State.

Q That other active competition can reach out in areas such as Lehigh?

A They can come into Lehigh.

Q And what happens in Lehigh?

A There is a pending merger between the Lehigh Valley Trust Company and the Industrial Valley Bank & Trust.

Q What size are each?

A Industrial Valley is two hundred-plus million and Lehigh Valley Trust is seventy-plus million.

Q That is just one of the mergers?

A Industrial Valley being in Montgomery County and Lehigh Valley Trust in Lehigh County. After the merger, potential competition from Lehigh Valley Trust has been eliminated because they can no longer come into our County.

The other merger which is being contemplated is that of Merchants National Bank of Allentown and Continental Bank

& Trust of Norristown, which is also in Montgomery [fol. 1159] County.

Q What sizes would they be?

A I am guessing. I don't know how big Continental is. I am thinking in terms of three to five hundred million dollars, I don't know. Merchants is in the neighborhood of a hundred and forty-three or a hundred and fifty.

Q So you are going to have those two very large banks in Allentown—

A Eliminated as competitors in our County. Now, we can still go into Allentown, but they can't come into Easton.

Q Are mergers being discussed in Northampton County?

A Off and on.

Q To meet the very objectives that you mentioned?

A If we can generate some enthusiasm somewhere along the line I am sure that we will see some mergers in Northampton County.

Q Do you think that that is indispensable to the achievement of your objective?

A No question.

Q What salary do you get now?

A $17,500, plus eight and a third percent bonus, plus numerous fringe benefits.

[fol. 1160] REDIRECT EXAMINATION

BY MR. WATERS:

Q When you said that because of these mergers in Allentown there would be elimination of substantial competitors, were you referring to their ability to branch in your County?

A Yes.

Q But they will still be able to do business in your County?

A They will still be able to attract business, this is a convenient business.

* * * *

[fol. 1161] Q One other thing. You said, that you are presently a bank of thirty million dollars in assets. You

indicated that next month you will have a lending limit in the neighborhood of $225,000?

A That's right.

Q Now, as I understand it, you are somewhat larger than the Phillipsburg National Bank, and yet you have had a lending limit equal to the Phillipsburg National Bank and Second National combined. What is the capital structure of your bank that makes that possible?

A Sheer size.

Q The size of the capital structure?

A That's right. We have $1,770,000 in surplus; we have $330,000 in capital, and while we can't use undivided profits, I don't know what the figure is, but it is somewhere in the neighborhood of five to six hundred thousand dollars. Now, in order to increase that lending limit we are going to transfer some of those monies out of undivided and into surplus, and also some of those monies out of undivided and into capital by virtue of one hundred percent stock dividend which has been approved, and the only thing holding up the bookkeeping is the fact that the new stock certificates have not yet been delivered.

[fol. 1162] Q What is your capital-to-loan ratio?

A I'd have to refer to the books.

Q Is this larger lending limit a factor in your ability to compete over and above the size of your bank as just thirty million dollars?

A I think if you will study your figures you will see that our ability to compete lies primarily in the demand deposit area, and you will see that our figures, proportionately speaking, are greater than other banks in the Easton-Phillipsburg area in that, I mean, of our total deposit liability some forty percent-plus is in the demand area where I think you will find the percentage of our other banks in the Easton-Phillipsburg area is somewhat less than that.

[fol. 1162-A] Q So your bank is different from other banks.

A Our bank is different in that we are more commercially oriented than they are.

* * * *

THOMAS B. ARMSTRONG, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?

A Bloomsbury & Stewartsville Road, Stewartsville, New Jersey.

Q Would you state your education and business background?

A I graduated from the University of Cincinnati as an electrical engineer in 1932. During college and after I was with Cincinnati Gas & Electric Company. Then with Sylvania Electric Products, Westinghouse, New York Transformer where I was first sales manager and director of engineering and vice president and general manager when it was merged into and became Nytronics, Incorporated.

Q What is your present activity?

A Retired.

Q And are you connected with the Second National Bank?

A I have been a Director of the Second National Bank for close to fifteen years.

[fol. 1163] Q Did you vote for the merger?

A Yes I did.

Q You are not actively engaged in the management of the business?

A No.

Q Do you believe that the merger is essential?

A I believe it is most important, yes.

Q Why?

A Well, my principal reason is people. I recognize the expanded lending limits and the growth possibilities as being of great importance. No organization, particularly a small one, can continue to exist and prosper without people, and as a small bank we face the problem of replacing some of our old employees at salaries far beyond that which we are paying for our present employees.

Q Is it your feeling that you have a better chance with a merger?

A Yes. I think that we would be forced to pay double or more to attract people, and in a bank of our size I don't believe we could afford to do that on our own and still earn a profit. I think we would have a real problem.

MR. MEYNER: Cross-examine.

CROSS-EXAMINATION

BY MR. WEINBAUM:

Q Mr. Armstrong, has your bank endeavored to go [fol. 1164] out and find management?

A We have made several preliminary searches. We have talked with our correspondents, particularly Mr. Greenley here in the Newark bank, looked through his organization and at the amount of money we could afford to pay. We felt it important to find somebody who was looking forward to living in a rural area and would have a real chance to grow into a senior officer capacity more or less rapidly. It seems like today most of the young people just out of school are getting salaries that are a little out of our reach, so then we set up a training program within our own bank so that we can train people and advance them. The process is long. It takes time since each one is fully occupied during the day and we don't have replacements, so they can go off, but we do send them to the Banking Institute and bankers' schools trying to develop them within our own resources, within our own organization. We do have some directors with a definite responsibility for continuing the search to locate someone.

Q That is not your responsibility.

A No, it is not my responsibility.

Q Who are the directors in charge of this?

A Our vice president Mr. Seiss I think has the greatest interest in it.

Q Any others?

[fol. 1165] A Not directly, but all are interested and in their visits at the bank meetings among other things mention that they are interested that we find someone, and if we find someone who shows some interest we would be most anxious to talk to him.

Q To your knowledge, has your Board or any officers ever spoken specifically to any prospective management candidates for your bank, do you know?

A I have.
Q Pardon?
A I have for one and I think most of the others have also.
Q You have spoken to somebody?
A Yes.
Q Who was that?
A Robert Van Buren.
Q When was this?
A July of last year.
Q July of 1967?
A Yes.
Q Who is Mr. Van Buren?
A He is the vice president of the Chemical Bank New York Trust.
Q You spoke to him about coming to work?
A Yes, and also if he could suggest someone to us.
[fol. 1166] Q What did Mr. Van Buren tell you?
A He sort of suggested what it would take to interest him, and I think the conversation ended right there.
Q How old a man is Mr. Van Buren?
A About 40.
Q And he is situated in New York City?
A He lives in Plainfield, New Jersey, but his principal office is in New York, but I expect he has responsibility for the west coast.
Q Was this a serious effort on your part to try to induce him to come out to Phillipsburg;
A Yes. I am very fond of him. He is a wonderful banker and I would have been delighted to have him.
Q Is he a personal friend of yours?
A Well, through business relations we have come to know him quite well, and I would say yes he is a friend, but not a family friend.
Q Did you have him to come out to the bank and spend any time in the bank?
A He has been there, but not at my request on this effort.
Q Did Mr. Van Buren ever suggest anybody else to you or refer anybody else to you with respect to coming to work?
A No, he has not as yet.
[fol. 1167] MR. WEINBAUM: We have nothing further

REDIRECT EXAMINATION

BY MR. MEYNER:

Q How much did he want?

A In excess of $30,000 a year plus other commitments.

ANTHONY F. STILLO, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?

A 867 Columbus Avenue, Phillipsburg, New Jersey.

Q What is your present position?

A Senior loan officer at Phillipsburg National Bank.

Q And will you give us the background of your educational and business experience.

A After graduating from Phillipsburg High School I entered the Marine Corps, served four years. After discharge I was employed by the Preferred Finance Company in their Lebanon, Pennsylvania, office.

Q Is that a small loan company?

A A small loan company. Subsequently I had several transfers to other areas such as Shenandoah, Pennsylvania, Allentown, Pennsylvania, Washington, New Jersey, and finally Phillipsburg. Preferred Finance then merged with the American Finance System out of the State Loan Finance [fol. 1168] in Washington, D.C. I was employed by them approximately 11 years, and then went to work for Union Bank & Trust Company in Bethlehem, Pennsylvania.

Q Who asked you to go there?

A Mr. Cooper and Mr. Warren Wilford, the vice president of installment loans.

Q How long did you work in the Union Bank?

A One year.

Q Then where?

A Then to Phillipsburg National Bank & Trust. I was hired as consumer loan officer.

Q Is there much difference between the consumer loan client of the Phillipsburg National and the finance company?

A Very little difference. Contrary to public belief, there is very little difference. I would say that 90 per cent of these

people that borrow from the finance company would qualify for a consumer loan in a bank.

Q How do you explain this competition then, or how do you explain that they get so much loans?

A They have pretty well-qualified employees. They have an intensive training program throughout the finance industry. They have a business development program, a dealer development program, a call report, the entire gamut of training in soliciting business.

[fol. 1169] Q In other words, they are aggressive.

A Yes.

Q Now what were the circumstances under which Union Bank hired you for consumer loans?

A Originally the Union Bank a Trust started to merge with the Lafayette Trust. There was a discussion at that time of possible merger. They felt they wanted to get a consumer loan officer trained so that when this came about in the Lafayette Trust Company in Easton, Pennsylvania they wanted someone from the Easton-Phillipsburg area trained in loans, and I was hired for this purpose.

Q Were you given instructions as to what area you were to work in coming out of Bethlehem?

A Yes. The entire Warren County area, the Easton, Northampton area and the northern part or southern part of Monroe County.

Q How long have you handled the consumer loans at Phillipsburg National?

A Since 1963.

Q And from what figure to what figure have the loans gone?

A Orignally about 700,000 to over three million.

Q What do you consider the area you can serve with efficiency or economy?

A I would say it would be in different classifications. [fol. 1170] I would say the home improvement and automobile I would say 50 miles, maybe a little further. Your appliances would be a shorter area. Your appliance dealer likes to be as close as they can. Of course, personal loans would be about a 20 to 25-mile radius.

Q In other words, there are four different categories of installment loans or consumer loans?

A Yes.

Q Automobiles, how far an area?

A We could go 40 to 50 miles. On home improvements I have gone beyond 50 miles. I have gone as far as Trenton.

Q Appliances.

A Appliances, appliances about 20 or 25 miles.

Q And personal?

A About 15.

Q Do you have loans in Lehigh County?

A Yes, I do.

[fol. 1171] Q Do you have loans in Lehigh County?

A Yes, I do. I have automobile and home improvement loans, generated from that area.

Q And how did they come in to you?

A Well, I have a lot of home improvement dealers situated in Easton, or have their home office in Easton and Phillipsburg, send their salesmen through these areas. And I must service my dealers and they write this business in these areas.

Also, I used to have automobile insurance agents generating automobile paper for me. But about a year and a half ago, two years ago, we cut our territory back due to lack of funds, and I cut this area off, the Allentown-Bethlehem area at that time.

Q If you could have additional funds, you could expand this area of loans?

A Yes, the business is there. It just needs the development—the dealer contacts, I should say.

Q What would you say is the growth of the area?

A The potential growth of Warren County and Northampton County?

Q I am talking about population, industry, residential development, that sort of thing.

A Well, I am the first vice-president of the Phillipsburg area Chamber of Commerce, and, of course, we are in contact [fol. 1172] with our industrial development program and we foresee a tremendous growth in the area, based on Route 78, Route 80, the Tocks Island development program. This is all going to generate a tremendous growth in our area and in the not too near future.

Q Do you see it in the property values?

A Oh, yes.

Q What about prospective plant locations?

A Yes. Of course, as was mentioned before, Hoffman-LaRoche is only twelve miles away, and they are putting a forty-one million dollar complex in. We have a development right outside of Phillipsburg, they purchased ninety acres of land to put approximately 500 homes up, plus apartment complexes.

Q How about the shopping pattern of your–

A They are building all the time. Shopping centers spring up where you least expect them.

Q Has this increased business in Phillipsburg?

A Yes, it has.

Q How about the exchange of labor in this area?

A Yes, we have a good exchange of labor, and back and forth across the river, as was mentioned in previous testimony.

MR. MEYNER: That is all.

[fol. 1173] DIRECT EXAMINATION

BY MR. ROACHE:

Q What did you mean when you said "serviced the dealer," what do you mean by "serviced the dealer"?

A Well, make dealer contacts, go to the dealer's place of business, sit down with him, talk to him, ask him if he has any problems with our institution, if he already is one of our dealers. Most installment loan business is generated by the banker going to the dealer. The dealers very seldom will come to you. When you service them you have to go to them. You have to live with them and try to solve some of their problems, be understanding.

Q Does Phillipsburg National and you, as the installment loan officer, do much floor planning?

A Yes, I do.

Q Does this take a special knowledge on how to handle floor planning?

A Yes, it does.

Q When you floor plan–I am speaking now of automobiles–do you do much automobile floor planning?

A We do very little automobile floor planning because of the amount of money that is necessary to handle an automobile dealer. They talk in terms of a hundred and fifty to two hundred thousand. And, of course, our legal lending limit is a hundred and ten thousand.

[fol. 1174] Q If the two banks were merged would you be able to do more floor planning?

A Oh, yes. I have had dealers intimate this to me already, if we were able to handle the increased amount of money that we could lend them.

Q Does a bank get more or less paper when it floor plans with automobile dealers?

A You get more.

Q Why is this?

A Well, you are lending the money to buy the cars, to put on his lot. And, of course, you generate the installment loan business because you become one package to him. This is the reason why GMAC, and CIT, and these other institutions floor plan these dealers, because they want this retail paper. So consequently you vie for the same business. But they have the "in" because they have the floor planning.

Q The fact that GMAC, and maybe Ford, or Chrysler, are already floor planning, would this prevent you from competing and obtaining this business?

A No, I think we could compete with them effectively.

Q You consider these your real competitors in this field?

A In the automobile field; yes, sir.

Q The other floor planning that you were doing, [fol. 1175] what did you have reference to?

A We have appliance floor planning.

Q Do you get more or less paper when you floor plan appliances?

A In appliances we usually get all of it. Unless the specific customer requests that they deal with a different bank, we get all of their paper.

Q Who do you consider as your competitors, or the people who are attempting to also floor plan with your same customers?

A Well, General Electric; some of the banks in Philadelphia handle the floor planning, because the wholesaler has their headquarters in Philadelphia, so consequently a bank like First Pennsylvania would handle the Zenith line, because the Zenith wholesaler is situated in Philadelphia.

Q Are there many automobile dealers in your area, as you have defined it, who you feel you could compete for in floor planning if you had this higher lending limit of the combined banks?

A Are there many dealers? Yes, I could think of about three immediately.

MR. ROACHE: That is all.

CROSS-EXAMINATION

BY MR. AUSTIN:

Q Mr. Stillo, you indicated that from the time you [fol. 1176] came to Phillipsburg National until about 1966, I believe, you were successful in increasing the total dollar value of consumer installment loans from around seven hundred thousand to around three million, is that correct?

A That is correct.

Q And that you were able to do this primarily through extending the geographic area from which Phillipsburg National derives its business, is that correct?

A That is part of it, yes.

Q I see, and you spoke also about a cutback in your consumer loan business at some point. To what do you attribute that cutback?

A At that point the bank felt that three million dollars of our entire loan portfolio was sufficient. And therefore I had to continue the same three million dollars outstanding. In order to do this, I had to just concentrate in my own area, because you are taking in so many thousands of dollars a day in payments, and you lend out so many thousands of dollars to equal this three million dollars. I could do this with just my own local territory. So I had to cut out these outlying areas like Stroudsburg, Pennsylvania; the Allentown-Bethlehem area; and, of course, the Trenton area; and the Somerville area. I cut all these territories out.

Q Are you suggesting that the turn-over rate on [fol. 1177] consumer loans is faster, or greater, in the local area, than it is in the more distant areas?

A No, I already have three million dollars out. This three million dollars—the payments on three million dollars is thousands of dollars a day. These loans are all over, but yet it is coming in. The loans have already been made. So I felt that

to satisfy my local needs would be sufficient to maintain the same level of three million dollars.

Q Do you regard consumer installment lending as a very profitable type of business for a bank to be involved in?

A Yes, it is.

Q How would you compare this with mortgage lending, which is more profitable for a bank?

A Well, installment loans are more profitable than mortgages. But, then again, you have to have mortgages, you have to have installment loans. You must satisfy the community's needs.

Q Do you know what the current ratio of mortgage loans to total loans is at the Phillipsburg National?

A No, I don't have any idea.

Q Since you state that installment lending is a more profitable kind of business than mortgage lending, then may I ask why did you not cut back on mortgage lending [fol. 1178] as opposed to consumer installment lending?

A I don't know. This is the directors' policy. They must maintain a certain balance, so much installment loans, so much mortgages, so much commercial loans. This is their decision, not mine. I have no idea.

Q While you were expanding your area, Mr. Stillo, did you encounter any difficulty with your home improvement dealers in connection with the quality of work that they were doing on particular jobs which, in turn, caused you problems, collection problems?

A We encounter difficulties all over—locally, out of town. Sometimes you have some home improvement jobs that things don't go right, or the customer complains. This happens. It happens to automobile loans, it happens to all types of loans. Color TV's don't work properly. It could happen across the street from the bank as well as thirty miles away. We always have problems. But we usually resolve them.

Q Now, if you cut back your territory, how do you handle problems that develop in areas such as Stroudsburgh, or Lehighton, or these other distant places from Phillipsburg?

A Well, we tried to determine if it was a legitimate problem. If it is a mistake of the dealer, we contact the dealer. We ask him to go back and rectify whatever the [fol. 1179] mistake was. And we get the cooperation from the dealer, if the dealer is still a dealer of ours. Of course, if he is

not dealing with us any more, if he is out of business, there is nothing that we can do. But if he is our dealer, he cooperates.

Q Could you handle these problems any more effectively if you had an office, for instance, either in or very near either of these areas that I mentioned?

A Stroudsburg?

Q Right.

A Well, I don't think an office there would be the problem, because we are only as far away as our telephone. It is getting the dealer, getting cooperation from the dealer. And this can be done by a telephone call.

Q Do you buy dealer paper with recourse or without recourse against the dealer, normally?

A What category of loans are you referring to?

Q Let's look at home improvement loans?

A Very little recourse; practically nothing as far as recourse is concerned.

Q What about appliance loans?

A Appliances I'd say are about fifty percent recourse. Automobiles are practically no recourse.

Q Mr. Stillo, do you recall having testified at a deposition taken in Phillipsburg, New Jersey, on April 10th, [fol. 1180] 1968?

A Yes, I recall.

Q On Page 53 of the transcript, Mr. Stillo, you spoke about insurance agents that you had up in Stroudsburg, in connection with your obtaining consumer loans. May I read first the question and then the answer? Page 53:

"Question: Am I to understand that the dealer paper that you handle, coming from Bethlehem and Allentown, is generated actually by dealers in the Phillipsburg-Easton area?

Answer: Right, only because I so choose. I had dealers in the Bethlehem-Allentown area generating business for me and I told those dealers I would no longer be able to handle that business."

This is in connection with your cutting back. Then you say, "I also had insurance agents up in Stroudsburg."

The question is: What did you mean by the statement, "I also had insurance agents in Stroudsburg"?

A The same as I had in Bethlehem. The same as I have in Phillipsburg and Easton. I have insurance agents—the agents I had in Stroudsburg were the All-State Insurance Company

agents, specifically Sam Flick, who operated out of the Sears Wyckoff store in Stroudsburg, Pennsylvania.

[fol. 1181] Q What were these agents doing for you, these insurance agents?

A They would make auto loans to their constituents, their insurance policyholders. For example, their policyholder would be interested in buying a car. They would tell him we will finance the car for you, we will get it financed for you. The reason why they do this is to protect their policyholder, because in many cases their policyholder will go out and buy a car through General Motors Acceptance or through a General Motors dealer. This dealer then sells the car, finances it through GMAC. GMAC also writes insurance, thereby, the Allstate agent loses the policy. So to hold on to this policyholder he will finance the car through us and maintain his policy.

Q Also on page 59 of the transcript you were speaking of what you were in fact selling in order to gain the increase in consumer installment business away from your immediate area, and you described it as service, and you indicated that service used to come to Water Front, I'd say I will give you service. What type of service are you getting from your present financial outlet?

My question to you is how can you situated in Phillipsburg give better service to customers who are located in a distant area such as Stroudsburg or Lehigh, better service than banks that are located in close proximity [fol. 1182] to those areas?

A Service to a dealer or an agent is a matter of telephone. If that agent had his office in Bethlehem and the bank was in Bethlehem, he would still pick up the telephone and call the bank in Bethlehem. So he picks up the telephone and calls the bank in Phillipsburg; still one telephone call. He calls in to me. I give him one hour service, two hour service. I call him back and say the loan is approved. He doesn't have to come to the bank, he has loan papers to have signed, he already has a draft drawn on the bank. He writes the check out, and the loan is granted, so we are only as far away as our telephone.

Q As far as you know, there were no on-the-spot problems that arise that would require you actually visiting a dealer, say, an appliance dealer or an automobile dealer, in these distant areas?

A If there was any problem I would go. I did make my regular visitation to him. I will try to spend two to three days on the road each week. This is what we mean by servicing. I guaranteed it.

* * * *

[fol. 1183] Q Is there any distinction between the amount of money that a sales finance company located in New Jersey can lend as opposed to the amount of money that the same type of finance company located in Pennsylvania can loan on a single loan?

A I believe the rate in Pennsylvania is higher.

Q By what amount, approximately?

A By a couple of per cent.

Q Is that both in terms of dollar amount and interest rate on the loan?

A You mean the maximum amount of dollar amount?

Q Yes.

A No, Pennsylvania is higher than New Jersey. The sales finance companies are governed by state law, the amount of money, the interest rate is governed by state law.

[fol. 1184] Q You have indicated, Mr. Stillo, that you could do more in the way of consumer installment lending, at least automobile installment loans, if the bank were larger and could therefore do floor planning for automobile dealers. In that connection you mentioned that there are at least three prospective dealers. Who are those dealers, please?

A Three I can think of offhand.

Q Yes.

A Phillipsburg Motor Company, Lane Ford, Alleger's Rambler in Belvidere. We have talked with them, and I understand they are dealing with Easton National Bank. Lane Ford is still dealing with Ford Motor Credit. Phillipsburg Motors is dealing partially with Easton National Bank. They have billboards on the highway outside of Phillipsburg advertising to this, attesting to this financing. Those are three of the dealers. I said I could think of three.

Q Would you happen to know what their present credit requirements are in connection with floor planning?

A In excess of 150,000.

* * * *

[fol. 1186] SHERWOOD WHITMAN, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Mr. Whitman, will you state your business background and educational background?

A High school graduate, five years of college at night. I have been associated with a Ford dealership since 1947, [fol. 1187] been a Ford dealer since 1963.

Q And when did you first come to Phillipsburg?

A April, 1963.

Q What basically is the total value of your assets? What would show on a statement?

A $280,000.

Q And when you first came to Phillipsburg did you endeavor to do business with a bank there?

A Yes, the Phillipsburg National Bank & Trust Company.

Q Will you describe your problem?

A Well, the bank was recommended to me and I opened a business account there, and they had an automobile department at that time, and I tried to get a line of credit for my floor plan. At that time it was about $150,000, and they couldn't handle it. Their loan limit there wouldn't permit this, and I subsequently had to go to Ford Motor Credit Company, which was at that time in Newark.

Q Are you doing business with them?

A With Ford Motor Credit Company.

Q What would your preference have been?

A At that time I wanted to go to a local bank due to the nature of our business.

Q Would you describe the area from which you get your customers?

A Basically Phillipsburg, Easton area and surrounding [fol. 1188] towns.

Q How far to the west do you go?

A We go as far as the other side of Allentown. We go to Stroudsburg, south into Bucks County.

Q And how far east?

A East we go—well, I have some customers here in Newark, but we go all over northern New Jersey, northern Hunterdon County. We have a lot of business there.

Q How many dealers are there? How many Ford dealers are there in Warren, Northampton and Lehigh Counties?

A I believe about eight.

Q Do you find that you have competition from the dealers in Allentown?

A Yes.

Q In what way?

A Well, they advertise in our area, and they try to draw our customers from us, Phillipsburg, Easton, Allentown.

Q Could you give us a rough percentage of how many of your customers are in New Jersey and how many are in Pennsylvania?

A I believe it is over thirty percent in Pennsylvania.

Q And the remainder in New Jersey?

A Yes.

Q What is the extent of the credit that you need presently?

[fol. 1189] A. Right now we need $200,000. Our business needs each year seem to be growing.

CROSS-EXAMINATION

BY MR. WEINBAUM:

Q Mr. Whitman, this credit that you need from the bank and that you are presently getting from the Ford Motor Credit Company, is this for floor planning of your automobiles?

A Yes.

Q Can you describe for us how this floor planning works, please?

A Well, the floor planning, the manufacturer wants cash for his automobiles when he delivers them to us, and the manufacturer bills the finance company direct, and within fifteen days they make payment directly to the Ford Motor Company for all our new car merchandise.

Q And does your floor planning requirement build up at any particular time of the year, like at the time of new model introduction?

A At this time of the year it builds up considerably. We go over the normal limits, and this requires a little bit of flexibility on the part of financial institutions.

[fol. 1190] Q What does your normal inventory of cars run?

A Oh, 55 to 60 cars.

THE COURT: Wait. I didn't hear that. Did you say 55 or 60–

THE WITNESS: Cars.

THE COURT: Is that your normal inventory?

THE WITNESS: Yes.

Q And that would be approximately $3,000 a car?

A Approximately.

Q And does the Ford Motor Company finance you 100 per cent?

A No, the Ford Motor Credit Company does.

Q The Ford Motor Credit Company?

A Yes, it is a different corporation.

Q Excuse me?

A They are different corporations.

Q Do they finance you–do they give you 100 per cent financing on these automobiles?

A On the new cars, right.

Q And they finance the entire inventory.

A That's right.

Q When you went to the Phillipsburg National Bank did they mention anything to you with respect to participating a loan?

A Yes, they did.

[fol. 1191] Q What did they say in this regard?

A They could try and shop this amount of money and pick up different banks that would participate in this, which I wasn't interested in doing.

Q Excuse me?

A I wasn't interested in that kind of a business arrangement.

Q Had you ever done this type of thing before, participating?

A No.

Q Why did you indicate that you didn't want it this way?

A It just didn't make any sense to me. When we need money, we need it in a hurry, and you can't fool around with this stuff.

Q Once the participation was set up, though, would it not have been true that you would have had the money as you needed it?

A I wouldn't know about that, how these things work.

Q Did you ever give consideration, Mr. Whitman, to doing your banking in Easton?

A Yes. I didn't want to go to Easton. I had some connections with the Ford Motor Credit Company, so I went to them.

Q Do you regard Easton as in the same community as [fol. 1192] you?

A Yes, back and forth, it's pretty local business, Easton and Phillipsburg. They are right alongside of each other.

Q And are you aware of the fact that there are a couple of banks in Easton with lending limits which could well accommodate you?

A Oh, yes, I am.

Q You preferred, however, to go to the Ford Motor Credit Corporation rather than any bank in Easton?

A Yes, with my connections with this company.

Q Do you pay more for your money dealing through the Ford Motor–

A Compared to some other dealers who go through a bank, I believe I do.

Q And how much of a difference is there, do you have any idea?

A It varies, a half to three-quarters of a per cent.

Q Once this line of credit is established, is it adjusted at all through the year?

A Yes.

Q Down or up, depending on the volume of business you do?

A No, depending on the money market. The Federal Reserve rates govern these charges. When they go up–

[fol. 1193] Q I am speaking with reference to the amount of credit you get.

A I don't understand your question.

Q Does your line of credit vary upward or–does it ever vary upward as the volume of your business increases; in other words, if you have a $150,000 line of credit with Ford Motor Credit Corporation now, can it be adjusted upward, should you be increasing your volume?

A Yes. I started with $150,000. It is up to $200,000 now.

Q I see. And your present credit needs then for floor planning are in the approximate area of $200,000.

A At least.

Q Do you use the local banks for any other types of banking services?

A All of my general business needs.

Q Apart from the floor planning.

A Yes.

Q And what types of accounts do you maintain in that regard?

A A regular business account.

Q And would that be with Phillipsburg National Bank?

A Yes.

Q Have you ever dealt with Second National Bank?

[fol. 1194] A No.

Q Have you ever approached them about doing business with them?

A No.

Q Have you ever considered going to the banks in Bethlehem or Allentown for your financing needs?

A Not Allentown or Bethlehem.

* * * *

I. CYRUS GUTMAN, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Will you state your educational and business background.

A I was educated in the public schools of Perth Amboy, New Jersey, and graduated from the Johns Hopkins University in 1932 with a B.S. in economics. In 1932-33 I attended Rutgers University in education courses. In June of '33 I attained a position with Motor Freight Express, Incorporated, a motor common carrier then domiciled in York, Pennsylvania. I started with this company as a clerk, in their York, Pennsylvania, office, was trained in transportation, working [fol. 1195] in their offices in Harrisburg, Reading, Jersey City, and in Philadelphia. I spent seven years with this company. And when I left the company I was Philadelphia district manager at 1940. At that time I took a position with Modern Transfer Company as a Philadelphia salesman. On

December 1, 1941, I was appointed general manager of Modern Transfer Company at Allentown, Pennsylvania.

The company at that time did somewhere in excess of $200,000 in volume, annual volume. I sold my interest in the Modern Transfer Company, which I had acquired over the years, a 50 per cent interest. I sold this 50 per cent interest last September. The company presently does approximately $8 million in annual volume as a motor freight common carrier. I was general manager, vice president and treasurer of the company at the time I sold my interest. And I am presently employed as director of national sales.

Q And where do you live now?

A I live at 1824 Turner Street in Allentown, Pennsylvania.

Q So you are familiar with trucking in the area since 1941.

A Yes, sir.

Q And what would you say is the area served by that trucking company and other trucking companies?

A I would say that the trucking companies generally which [fol. 1196] maintain terminals in the Allentown-Bethlehem-Easton-Phillipsburg area serve the Lehigh Valley area, which is a radius of about 25 miles of Allentown. However, Modern Transfer Company, which serves that territory from the Allentown Terminal also has authority and serves as far as Dover and Hackettstown daily, from the Allentown Terminal.

Q How about the union setup, or the Teamsters setup?

A Teamster Local 773 is the local which controls the drivers and helpers and Teamster employees in Allentown, Bethlehem, Easton, Phillipsburg—in that same area.

Q How about your employees, where do they usually come from?

A Our employees come from a radius of about 25 to 30, and in some—one case as far as 40 miles from Allentown.

Q How about other trucking outfits; have you reviewed the other trucking outfits serving that area?

A Yes. I'd say there are between 30 and 40 common carriers with terminals in the Allentown-Bethlehem-Easton-Phillipsburg area which serve that area on a daily basis, with less truckload and truckload shipments.

Q Do you have a list of those?

A Yes, I do.

[fol. 1197] A Yes, I do. This list I took from the classified section of the telephone book.

Q And you know their activities?

A I know of the activity of most of these carriers. I am not sure that every carrier has the authority to serve the entire area, but I do know from my experience that any carrier who would have the authority would serve that full area to the extent of their authority.

MR. MEYNER: Do you have any objection?

MR. WEINBAUM: No.

MR. MEYNER: I should like to offer this into evidence.

(Exhibit D-58 received and marked in evidence.)

Q Do you have a civic responsibility in that area?

A I believe I do, yes, sir.

Q What is it?

A Well, I do serve as a member of the Lehigh-Northampton Joint County Planning Commission; president of the Industrial Development Corporation of Lehigh County; president of Lehigh Economic Advancement Projects, Inc.; vice-chairman of the Allentown School District Authority, and I do serve on numerous other boards as a director.

Q Now, in the planning function of this Commission, what is the area that they consider, we will say, economically and socially integrated?

[fol. 1198] A Well, the area which the Lehigh County Planning Commission originally was a County planning commission, and in order to obtain Federal funds we had to expand it to a Lehigh-Northampton County Planning Commission, but the Federal government for its statistical purposes uses–adds Warren County additionally. However, because of a political boundary, State boundary, we have our Lehigh-Northampton County Commission, but we also do consider Warren County as part of our–the trading area, the normal area.

Q By what agency was it suggested that Warren be included?

A The Federal agency which–

Q HUD, Housing and Urban Development?

A Yes, On the transportation angle, I might also add that the traffic managers have a club, the Lehigh Valley Traffic Club, and that is the club which all transportation men belong

to, and that, of course, includes many members, all members in the transportation industry in the Warren County area as well as Lehigh.

Q Warren, Lehigh and Northampton?

A Yes.

MR. MEYNER: Cross-examine.

CROSS-EXAMINATION

BY MR. WEINBAUM:

Q Mr. Gutman, do you see any similarity between your business and the banking business?

[fol. 1199] A Yes, I do.

Q What are the similarities?

A A similarity of growth, and if our company didn't grow and expand we would be out of business. And I feel also that a bank which is too small to handle the business of industry which is growing in an area will also eventually wither on the vine.

Q Do you know anything about the growth of the defendant's bank?

A Of which.

Q Of the defendant bank.

A No, I don't.

Q Do you know anything about the growth of any of the banks in the Lehigh Valley area?

A I do know that the banks, some of the banks in the Lehigh Valley area are growing, and the Lehigh Valley area is experiencing and about to experience competition from other banks which have come into the area by merger.

Q Might it be that your trading area as a transportation company would be somewhat different from the trading area of a bank?

A I wouldn't say that you can compare them exactly, but the principle is the same. The trading area of a bank, as banks grow—there was a little bank in Topton which merged with a bank from Reading, and then the Reading bank—then [fol. 1200] the Topton bank opened a branch in Allentown. Now we have got a big Reading bank operating in Allentown. The same is true of a trucking company which acquires a piece of authority and then tacks that authority to another authority, then you have a big, strong trucking company competing with a small, local company.

Q But you do move your equipment and freight through a large area, do you not?

A I don't understand what you mean.

Q You move your vehicles through this vast area which you have just spoken of?

A Yes.

Q And do you deal outside of the two-State area of Pennsylvania and New Jersey?

A We operate in—we have since expanded into Baltimore and upstate into the Hudson Valley area, Pittsburgh and Ohio.

Q Do you go as far west as Ohio?

A Yes. We also have a steel division, Burns Harbor, Indiana, serving it, eight States, for Bethlehem Steel Company.

Q Do you have depots throughout this area?

A Pardon?

Q Do you have depots throughout this area?

A We have terminals at—well, we have a steel terminal at Burns Harbor and one at Catening, a steel terminal at [fol. 1201] Baltimore, dry freight terminals at Youngstown, Ohio, and Baltimore, Allentown and Pittsburgh Pennsylvania, Schenectady, New York, Newburgh, New York, Brooklyn, New York, Newark, New Jersey, and Philadelphia, Pennsylvania, and an agency also at Wilmington. Some of these are agency terminals.

Q Where do you do your banking?

A We do our banking in Allentown and in York, Pennsylvania. We use several banks.

Q Excuse me?

A We use several banks.

Q In York and Allentown?

A Yes.

* * * *

REDIRECT EXAMINATION

BY MR. MEYNER:

Q You are familiar with the proposed mergers in Allentown?

A Yes.

Q What are they?

A The first recent merger was the proposal by the Industrial Valley Bank to acquire the Lehigh Valley Trust Company, and the second proposed merger is the proposal by the Continental Bank & Trust Company of Norristown to acquire the Merchants National Bank of Allentown.

Q So outside County banks are coming in and merging in Allentown?

[fol. 1202] A Yes. And Allentown needs those big banks because industry in Allentown is growing, and Allentown industry should not have to go to Philadelphia the way they have, and to go to York, and to go to Lancaster, and go to Reading, where the big Reading banks are coming in, or to New York, and many of our Allentown businesses bank in New York and in other large centers where they can obtain the necessary funds to operate their businesses.

* * * *

[fol. 1203] RICHARD MONTE, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?

A I live at 124 Summit Avenue, Phillipsburg, New Jersey.

Q And where do you conduct your business?

A My business is located at 525 Memorial Parkway in Phillipsburg.

Q That is on Route 22?

A On Route 22, sir.

Q And under what name do you conduct your business?

A I trade under the name Monte's TV Sales & Service.

Q Will you state your educational and business background.

A Well, I have been in business–I was a high school graduate of Phillipsburg High School, and I have been in business in Phillipsburg area for eighteen years this November.

Q Describe the business.

A Well, our business started as a service agency. I formally worked with my Dad, who started the business. In 1963 John Rougus and I purchased the business from my father, and then in 1966 I bought the business from John

Rougus, and now I am sole owner. At this time we went into [fol. 1204] retail sales, and that is our prime business today.

Q What are your products?

A We handle a General Electric line, the complete line of appliances, Zenith television line, Gibson refrigeration and air conditioning. These are our main suppliers.

Q What would you say are your total assets, what would a statement show, not net worth, but total assets.

A I would say approximately 200,000.

Q Have you done business with the Phillipsburg National?

A With the Phillipsburg National, yes I have.

Q Where would you say your customers come from?

A Well our greatest portion of business is in the Easton-Phillipsburg area, but we do, I would say we handle a radius of approximately 15 to 18 miles. In other words, in one direction possibly, you know, 12 to 15, and in another direction as far as 18. In round numbers I would say 15 miles.

Q Going west this would include what municipalities?

A Well going west we would take in the Bethlehem and part of Allentown.

Q And north?

A As far as the Belvidere-Mountain Lakes area. Well, this would be the bulk of the business in that area.

[fol. 1205] Q How far to the east?

A In the Milford-Little York area, and in the south we go as far as Riegelsville, Pennsylvania and New Jersey.

Q What competitors do you have in the way of people who advertise or who get business from the Phillipsburg area?

A I would say the Hess Brothers of Allentown are probably the largest competitors we have as far as appliances. There are many people that call upon us to do their service, and it is usually an excuse that it was a gift, but we can find out through serial numbers that the purchase was made through that area.

Q Have you had to borrow money from the Phillipsburg National?

A Yes. Originally when I purchased the store, this business on Memorial Parkway, four years ago this November, I approached them and they extended to me a line of credit of $50,000 for floor planning. Within I would say approximately two years ago I bought this business and building on a sales purchase agreement, and I wanted to pay

the party off whom I purchased it from, and I approached the bank for a mortgage, which was approved, but at this time I had to take a cut in my floor planning account of $25,000 to allow for the mortgage I was seeking.

Q That is with the mortgage and your borrowing [fol. 1206] you would have exceeded the limits?

A Yes, sir.

Q Where did you turn in order to get credit?

A Well, I had to increase my line of credit with First Pennsylvania Bank in Philadelphia and also with General Electric Credit Corporation.

Q Would you prefer doing business with the Phillipsburg National?

A Yes I would, primarily because I am well known at the bank, and as far as the business aspects, the rate of interest was less, and now in comparison to General Electric Credit Corporation their rates are 1.4 per cent per month on unpaid balances, whereas until the last increase to 7 per cent per year it was a half per cent per month at the local bank.

Q So you are really paying 15 per cent?

A That is right, on a yearly basis. At the First Pennsylvania Bank the rate is approximately 9 per cent per year at this time.

Q And what are your credit needs at this moment?

A Well, that fluctuates. While going into the greatest part of our business—in other words, the last quarter of the year is usually the bulk of our business, and at this time of the year we do need more moneys to display more merchandise and too, the biggest part of our business is [fol. 1207] done through this period of time.

Q Well what limit would you desire or what uppermost limits?

A Well, in other words, with mortgages and other moneys that I would need as far as floor planning—in other words, a gross amount of approximately $200,000.

Q Are there any other disadvantages of doing business with the General Electric Credit outfit?

A Well, with any distributor it is much easier if you have moneys available when you go to purchase a product, say during their—during the year most of these companies have at least four shows, and at this time if the money is available to me—in other words, if I would go and be able to buy more or less on a cash basis I can buy the merchandise that I want,

whereas what they do to entice a person into buying their packages, they do mix products in there which are slow movers, and in order to buy what we want we must take these other items also.

Q If you have the money from the bank and went in there–

A You can purchase just what you want.

Q Then you wouldn't have the slow items.

A That is right, sir.

* * * *

[fol. 1208] CROSS-EXAMINATION

BY MR. AUSTIN:

Q Do you consider Second National Bank of Phillipsburg or Phillipsburg Trust Company National Association as alternative sources of credit in the Phillipsburg area?

A I have used them, yes.

Q Is there any particular reason why you did not use one of these alternative sources at the time that you [fol. 1209] over-extended yourself at Phillipsburg National?

A Well, back in 1960 I was associated with the Phillipsburg Trust Company, and at that time I had a credit limit of approximately $8,000, and I know that–I mean from experience with the bank that they are more or less, if I may say, a little more backward than the bank I deal with now, sir.

Q What about Second National?

A I never did approach them about a floor planning account. I have two mortgages with Second National Bank on properties.

Q Have you ever given consideration to participating a $200,000 line of credit locally, that is participation between two local banks?

A No sir, I have not.

* * * *

[fol. 1210] Q My question was directed to a line of credit shared by two local banks, not the GE Credit Corporation. I was asking what difficulties if any would that approach cause you in the conduct of your business, say if you had Second

National Bank and Phillipsburg National participating a line of credit at $200,000, which you say you need.

A I would doubt if the Second National Bank would go along with me on that because with my retail paper I use the Phillipsburg National Bank almost exclusively with this, and this has a bearing, as far as the money that they have lent me, I feel. In other words, the more business I do with that bank I feel the easier it is and the further they will go along with me.

[fol. 1211] Q Do you regard any of the Easton banks, Mr. Monte, as being alternative local sources of credit for your business?

A Well, I have never approached anyone, you know, in any of the Easton banks other than smaller loans, personal loans. As far as any business accounts go, I have never asked them at all.

Q Is there any particular reason why you have not, sir?

A Well, a few years back I did use them for retail contracts, and at the time that the Easton National Bank merged—in other words, for them to be responsible for any retail paper, they more or less want you to do business there, and at the time Mr. Colver was living. He more or less discouraged us as far as using their retail contracts any longer.

* * * *

[fol. 1212] ARTHUR W. PAINI, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?

A I live at 708 Wilbur Avenue in Phillipsburg, New Jersey.

Q Will you describe your educational, business and employment background?

A I graduated from Phillipsburg High School. I attended Michigan State College. I have been a Commissioner in the Town of Phillipsburg for eighteen years. I am a former Mayor, served for six years. I was formerly the executive secretary of the Chamber of Commerce in Phillipsburg for three and a half years. And presently I am the general superintendent of maintenance and equipment, Delaware Joint Toll Bridge Commission.

Q Which operates bridges from where to where?

A From Burlington County to Milford, Montague, just south of Port Jervis, New York.

Q And in that position you are responsible for what?

A For the maintenance of equipment of all the bridges.

Q And you are presently a Commissioner of what?

A I am presently the Commissioner of Public Safety. I would like to add, too, that I was a building contractor for twenty years in the Phillipsburg area.

Q When you were engaged as a building contractor, [fol. 1213] what was your volume of business per year?

A It exceeded $150,000 a year at one time.

Q Will you describe the section in Phillipsburg where the two main offices are located?

A You are talking about the main offices of the Second National Bank and the Phillipsburg National Bank & Trust Company?

Q Yes.

A This is the older section of the town of Phillipsburg. It is quite deteriorated. We did a small redevelopment project back several years ago. It is in need of, in my opinion, more redevelopment, which, of course, requires money by the municipality and, of course, also the business people, the residents of that particular area, if we ever do this other redevelopment project.

Q Where is the area of growth?

A The area of growth is in the new section, as I call it, of Phillipsburg, up on the hills, and in the outlying areas, outside of Phillipsburg, and especially in the northern—Warren County, Sussex County area, with the Tocks Island Project being contemplated.

Q Tocks Island would be how far north of Phillipsburg?

A Approximately thirty miles.

Q When you were engaged in business as a contractor, [fol. 1214] what did you consider the area of your activity?

A We did work within an area of roughly twenty, twenty-five miles.

Q How about the working pattern for the area?

A Well, of course, we have a lot of people that live in Phillipsburg and work in Bethlehem, Allentown, Riegelsville, down at the paper mill. We have a lot of people that work for the State Departments that travel as far as Trenton day in and day out. And then we have the reversal, where a lot of people

from Allentown, Bethlehem, Washington, and other areas, come into Phillipsburg because we have the Ingersoll-Rand plant, which employs about 4,000 people. And then we have other industry there.

Q How about immediate employees working for the Bridge Commission?

A Our employees come from as far as thirty, thirty-five miles away from our Easton-Phillipsburg operation.

Q How about the shopping pattern?

A Well, of course, when I was first elected back in 1950 all I could see was New Jersey cars going into Pennsylvania. Now we have sort of the reversal. It is kind of nice to see a lot of Pennsylvania automobiles coming into New Jersey.

Q That is accounted for by what?

A Well, by the fact that we have a new shopping center. [fol. 1215] And I might add that my wife makes frequent trips to Hess Brothers in Allentown—as a matter of fact, too many.

Q What is your experience on mortgage financing? I think you mentioned that your father does some.

A My father does. My father has given out mortgages over many, many years in the Easton-Phillipsburg area, private mortgages. He presently holds some. And here again, it was in an area or radius of some twenty-five or thirty miles.

I might add an interesting point, that he did take out a substantial amount of money from several of the Phillipsburg banks and deposited it in the New York bank because the interest rates were a little better down there.

Q Where is the present Town Hall?

A The present Town Hall is in this area of the Second National—the present main office is. A new building is being constructed and we hope to have it completed by next summer, up on Route 22, at Roseberry Street, which is up in the area where the new shopping center is, the new high school, the new Warren Hospital, the new professional offices, many of the new businesses, and many of the new residences, up in the Hillcrest area.

Q Did you have some experience with reference to borrowing in the Easton-Phillipsburg area?

A Yes, several years ago I had a couple of partners that [fol. 1216] wanted to go into a motel venture to the extent of some $400,000. I went to the local banks in Phillipsburg—we needed $250,000—and we weren't successful there. And we

went across the river to Easton, at the Easton National Bank & Trust, and the loan was approved for $250,000.

Q What happened to the venture?

A We finally didn't go through with the venture because one of the partners backed out.

Q Have you heard any discussion of the merger?

A Of course, I deal with people day in and day out, in many capacities, and there has been an awful lot of publicity with regard to the merger. But it is amazing to me that you hear very little talk about people's opinions. I have had no one say to me that they objected to the merger. Some possibility of that might be the fact that people don't understand it. But I have had no one come to me and say—or as a public official, which some people normally do—say to me, "We object to this and you ought to try to do something about it." I have had no one.

Q Are you favorable to the merger?

A I am favorable to the merger, yes.

Q Why?

A Well, I believe, as a public official—and I think of government—that there is only one way that you are going to [fol. 1217] provide better services and that is to consolidate. We are doing it in government. We have had the merger in industry for a number of years, in railroads, and utilities. And I think in order to provide better services, provide better facilities, and be in a position to pay people better salaries, so that they are experts in various phases—well, when I talk of government—in various phases of government. And I am assuming that in loaning institutions we have the same thing. Somebody might be well versed in one phase, and with a real educational background. And I think it is for the betterment of the community.

I might add, too, that I think it is important that people can borrow money and substantial amounts of money today. This wouldn't be necessary maybe—or wouldn't have been necessary back fifty years ago. But even the smaller businessmen in our community need $100,000, $150,000, $200,000 at times. And this wasn't the case many, many years ago. As a public official, I am a little selfish, maybe, but I have to run for public office, and I like to do business in my home town. I don't like to have people say, "Well, I just saw Art Paini come out of the Easton National Bank & Trust."

These are some of the things that I think are important. There is the matter of convenience. With the traffic today—I

[fol. 1218] know getting here this morning was quite a problem. And I know the problem that we have in Easton-Phillipsburg during the peak hours. And if I had a bank in Easton or in Bethlehem, it is very inconvenient. It is time-consuming. It is costly. These are some of the reasons I believe that it would be a good thing.

Q But banks or branches located on highways don't give you this trouble, do they?

A Not necessarily, because you have the main arteries to get to and from.

Q Are you familiar with some contractors, since you were in that business, who have needs of what you say is a hundred to two hundred thousand dollars?

A Oh, yes, there is no question about it. My brother is presently in the construction business. And he is not that big, but there are many times, in talking to him, that he is in need of seventy-five, a hundred, or a hundred and fifty thousand dollars, as small as he is.

Q How about the need for municipal financing?

A Well, we had a problem with our redevelopment project on Howard and Fayette Streets. We wanted to do some temporary financing at that time, because the bond market wasn't just right, in our opinion, and the opinion of our consultants. And we wanted to borrow $260,000 and we had some real problems with it. We had to go to the market and sell our bonds. And [fol. 1219] we felt that we could have saved some money if we could have done some temporary financing. And here again, we are a governing body in a small community. We want to do business with our people, locally. And we didn't have the opportunity to do so.

Q Do people have any trouble cashing checks in Phillipsburg?

A I don't think so.

Q In your position with the Bridge Commission, are you familiar with the daily traffic patterns?

A Yes, I am.

Q I show you Exhibit D-32 and ask you whether that portrays the daily average volume of traffic between Phillipsburg and Easton, as well as the various crossings?

A I would say, based on my recollection, that these are the average figures. These figures are made available to me every month, as general superintendent, and they look right to me.

Q And that is done in the ordinary course of your work?

A Right. Yes, sir.

Q Describe the two principal crossings at Easton-Phillipsburg and the charges therefor.

A Well, we have the Easton-Phillipsburg toll bridge, which is a toll facility, of course. And then we have the [fol. 1220] Northampton Street Free Bridge, which is a tax-supported bridge, and no tolls. Of course, our rates on the Easton-Phillipsburg Bridge are ten cents for passenger cars and then the trucks are based on the number of axles and the weight.

Q But there is a commuter fare, is there not?

A And there is a commuter fare, two and a half cents a trip.

Q That is, you buy a book of forty for a dollar?

A Right.

Q And you can use those at any time?

A On any of the bridges, by the way, from Port Jervis to Trenton.

MR. MEYNER: I would like to offer this in evidence.

THE COURT: Mark it in evidence.

* * * *

[fol. 1221] Q How about the mobility of labor; are there labor unions in the construction industry?

A Yes.

Q What area do they cover?

A Well, they cover the—as a matter of fact, some of the construction labor unions cover an area from Hackettstown to Newark, from Hackettstown down to about twenty-five miles north, but then in the immediate area I'd say here again we are talking about an area of some twenty-five to thirty miles.

* * * *

[fol. 1225] PATSY TERSIGNI, sworn

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?

A I live at 316 Third Avenue, Alpha.

Q And what business are you presently engaged in?

A I am the Oldsmobile dealer here in Phillipsburg, 333 Memorial Parkway and the rear service entrance is on U.S. 22 East.

Q How long have you been in that business?

A Since 1947.

Q Would you describe the territory assigned to you by General Motors for Oldsmobiles?

A My territory or zone of responsibility with Oldsmobiles is Easton, Bethlehem and Allentown and Phillipsburg. It is all one area, and it has been that way now since 1960.

Q When you say area of responsibility, that means if people come for service from that area you must serve them.

A You serve them and you must sell them a car.

Q Will you describe what you consider the market for the sales of automobiles?

A The market for the sale of automobiles in my area, I sell at least 40 per cent of my cars—I did up to this year, and I will this year in the Pennsylvania area. I go [fol. 1226] as far west as Allentown and I go as far south as Milford in New Jersey or Revere in Pennsylvania, and I go as far east as Clinton and Annandale and Lebanon, that area there, and north as far as Washington and Belvidere in the north, which would be a radius of at least 20 miles, 20 or 25 mile radius.

Q What percentage of your sales would be installment buying?

A My installment sales run on new cars approximately one-third, 33-1/3 per cent, and on used cars it varies from 65 to 70 per cent on used cars. The used car—the differential in used cars is so great because most of the people have trouble borrowing money on a used car from a bank, but they don't have quite that trouble with a new car that they would with a used car.

Q You do some financing yourself?

A Very little. GMAC does practically 100 per cent. I would say the percentage of other finance companies, especially through banks, is less than 5 per cent of my volume.

Q Are you connected with the Second National Bank?

A I have been a director there since 1964, yes.

Q The pattern of purchasing cars, could you describe that in this area?

A Well, in the so-called small dealer area, which [fol. 1227] Phillipsburg is, the dealer has a very, very hard problem to get

banking money on account of their line of credit, and especially when you have a build-out of cars in June and July and August. In that three-month period most dealers need at least $150,000 to purchase cars, and it is just impossible to get it except from GMAC. In spite of the fact that GMAC's rates would be higher than a bank, the dealers are more or less inclined to go along with GMAC on financing of new cars plus used cars. On the used cars they will take any vehicle that the dealer signs recourse for. They take vintage cars, you know, that the banks wouldn't even think of taking.

Q Where do you have competition in the sales of cars contrasted with your agency?

A The big problem is in Phillipsburg we try to keep the Phillipsburg buyer from going into Allentown-Bethlehem market. That is the big problem.

Q What appeal is there to–

A Well the appeal there is that the larger dealer, he has a bigger volume. He carries more units. Where we would have trouble getting a $150,000 line of credit they would get a line of credit from GMAC that would be half a million dollars, that would give them the opportunity to carry 150 to 200 cars. With a selection like that against a dealer in Phillipsburg who sits there with 15 or 20 cars. [fol. 1228] the salesman has two strikes on you to consummate the sale, and that is the big problem.

Q How about advertising?

A Well, advertising, you can't compete with them because my advertising bill runs a little over $12,000 a year, and per unit, when I sell 125 cars, the advertising bill in my case would be at least $100 per unit. Now a dealer in Allentown that sells four and 500 cars at $40 a unit for $500 a car, it gives him a nice advertising budget. Therefore, most of the ads that we see in the Easton area papers are from Allentown dealers and Bethlehem dealers rather than they are from Easton dealers or Phillipsburg dealers. It affects our business quite a bit.

Q You were a director of the Second National when the merger agreement was entered into?

A Yes. I was there when Mr. Greenley and Mr. Wilson made various trips and talked about the merger of the two banks, and when they asked the directors' opinion of it I just felt that–I said, "I was only a director here, Mr. Greenley, a couple of years, and I am surprised at the paltry–at the paltry salaries

that the people in our bank get, because I don't even get car washers for what the tellers in the bank are paid." I was shocked.

Q Have you heard some discussion since the merger was announced publicly?

[fol. 1229] A The discussions I have had with the people I talked to, the discussions have always been favorable to the merger, and we know that the business people—when you meet them at the Chamber of Commerce or any other place, they know it is going to be good for the business of the inhabitants of Phillipsburg.

Q Why are you for the merger?

A Well, the reason No. 1 I am for the merger is to try to keep some young help in the business. Now in my business we have that problem also, but it is not as critical as it is in the business of banking.

Q Why would a larger bank meet the problem better?

A Well they meet it for the same reason the person in the car dealer business can meet it, and that is by paying better salaries and competing with the rest of the industry.

Q Why can't each bank do it?

A Well, there just is not enough there for each bank to do it. There is not enough there. I am in desperate need of a trust officer. I have the Keough Pension Plan, and that plan already, even though I had an attorney there with Equitable Life Insurance Company, I lost quite a bit of money in 1968 where if I had a trust officer he would have told me, "Don't pay that by the year. Pay it by the month," because the employees you have, you are going to lose that [fol. 1230] money when they leave.

Q Do you have some trust business?

A I have been solicited as far away as Newark. That is New York Life Insurance Company, Morristown, New Jersey. I have been solicited by the Metropolitan in Easton. New York Life in Allentown, and they are all out of town. I would like to have one in town.

Q Do you know of other people who have employment plans or pension plans that would go to a trust department?

A The dealers that I talk to, a lot of them would, and they know they have to have the plan to try to keep employees, especially mechanics. It is very critical, mechanics and auto body men.

Q How about the other advantages of the merger?

A The other advantages of the merger are—it's not only on the financial plan, it is more or less a little better red carpet treatment, and that way I mean the people will certainly be better and the branch offices will be a little better manned where 3,000 people can try to get in the bank in a week's time with only a few employees to take care of them, and the waiting time would be less. The service would be better, and the other advantage of course is I think the bank would grow a lot better. Every week you could keep on naming the places that get turned down. Shahmoon Industries, and a place that I worked for twenty [fol. 1231] years, the bank can't loan them money. You know, they have to go—

Q Because of the loan limit?

A Because of the loan limit they have to go to New York, have to go out of town.

CROSS-EXAMINATION

BY MR. AUSTIN:

Q What line of credit do you have at present, Mr. Tersigni, at your agency?

A I am one of four Pontiac dealers that have an open line of credit with General Motors. I have been in the business long enough that I own all of my cars, and I own my building, and the only time I use this credit on new cars is when we have a build-out, when you need that hundred or $150,000, which I don't have because of the inventory that I am currently carrying. I don't have that additional money to buy what General Motors calls their build-out, you see.

You have to buy in June the cars they are going to make during June, July and August when they finish their current model run of the year. That is why there is hardly any bank that handles a car dealer.

* * * *

[fol. 1234] Q Do you know what has been the consequence of Second National's establishment of a branch office out around the Hillcrest shopping area?

A Personally I feel now that if it wasn't for the branch office, the main office would die, it would die.

Q Would you say that this was a real step forward, as far as servicing your customers out in that general area is concerned?

A Very definitely, very definitely.

Q And do you regard that general area as in one of the new growth areas?

A It is in the new growth area, yes. Traffic there is tremendous any more, in the past seven, eight years, tremendous.

Q Are you aware of how the branch office was financed—the construction of the branch office was financed?

A I wasn't a director at that time. The branch was built in 1961 and I became a director in 1964. But if the bank could have grown the way the branch did, the bank would be all right; but the bank didn't. The branch grew. It is at the point now where they have two customers to every one at the main place. Their Christmas Clubs are [fol. 1235] fifty percent greater at the new bank than the old place; the vacation clubs are almost eighty percent greater than they are at the old place; and the flow of people is more than 125 percent better at the branch bank than it is at the main office. That is the kind of position the main office is in.

Q Well, based on the results the Second National obtains from opening the new branch, was any consideration given to establishing branches in other areas?

A Well, the best logical step would be, first, to merge with another bank, so you would get your funds together, and you were able to open up another branch, or take care of more business. There are different spots that you could open in Warren County, but you wouldn't undertake them now. You would spread yourself out too thin. Instead of improving your condition, you would only weaken it. See, like in my position that I am in now, if General Motors would let me handle Cadillac, let me merge with Cadillac, I could give a lot better red carpet treatment to my customers. But as it stands now, it is just physically impossible to do it and try to obtain a black figure. That means saying a profit, of course. You know, instead of red ink, you like to use the black ink.

Q You say that the logical approach to take, as far as expanding your services is concerned, would be to [fol. 1236]

merge. Well, my question is, if you were able to establish a branch office a few years ago without a merger, and you have grown as a consequence of the establishment of this branch, why does it now become necessary to merge to establish a second branch?

A The branch bank has fulfilled what it was built for, and that was to keep the assets of the bank from going down. And that has achieved that. It has kept the assets from going down. I am positive if it weren't for the branch bank, the main bank itself, Main Street, would never go ahead the little that it did since 1961. I think they have improved their assets something like five or six million dollars, which isn't—you know, that is not phenomenal by any means, for today, anyway.

Q Doesn't the Second National still give its customers red carpet treatment, as far as the normal services accorded to a customer?

A Well, they are limited to the amount of employees they can have, they are limited to the amount of wages that they pay. Can you imagine a bank president making less than $10,000 a year? Boy, my car salesman makes more than that. My general manager, he makes more than the bank president. Well, the money isn't there, that's all. And they know that. The money isn't there. It just isn't there. And they are desperately in need of younger people, desperately. [fol. 1237] And that goes for both of them, not only one. You know, I do business with both banks. And the trust company, too.

Q Are you familiar with the efforts made by the Second National to correct this management problem that you are describing?

A I am familiar with it, very much so. But when you look at the money costs that it would take to bring a fellow into the business, and especially a fellow that is a go-getter and sales-inclined person, gee, it is physically impossible to get a man like that for less than $10,000 a year.

Q In the operation of your own business, Mr. Tersigni, if you wanted to bolster your sales by, say $200,000, or a quarter of a million dollars per year, but you were limited—your sales staff, and the only way that you could garner this new amount of business would be to hire an additional salesman, would you not do so?

A No. If you would hire an additional salesman, and you done a quarter of a million dollar business, the percentage of profit in the car business wouldn't even pay a first class salary in a quarter of a million dollar business.

Q How much would you have to make before you could pay, as you call it, a first class salesman?

* * * *

[fol. 1238] Q But, in any event, if you wanted to expand—if you wanted your firm to grow—measured by a quarter of a million, half a million or a million dollars—and you could not do so with your present staff, would you not then consider hiring whatever additional staff you needed in order to be able to garner—

A Well, I have to answer you the way I answered the road man from Oldsmobile that wants you to put up a new building, say. And I keep telling him the same thing. I say, "Look, you let me merge with another dealership like my company is. My company has five makes of cars, see. [fol. 1239] Now you want me to put up a new building, see, and sell X amount of cars, with just one franchise. Yet in my area you have quite a few other Oldsmobile dealers. Now, if you let me merge with another company, then I can put up a new building. And that is all new business, too. I don't care whether it is Pontiac, Buick or Cadillac."

And that would pertain to a merger just like a bank would. You could have more help. You could have a bigger place, give better service. You are just tied down. You have to start this with X amount of cars. I try to shoot for 150 cars a year. And my expenses every year, they run a little over $60,000 with a small dealership that only has eleven employees. And I don't have hardly any interest on cars. I own my own building. And, boy, I am telling you, it is a hard job to do it, very tough.

Q So in your view, the only way to grow is not by internal expansion but by merger, is that a fair statement of your—

A In the area that I am in, the area that I am in that I am speaking for, that's the Phillipsburg area, I can't see any other possibility of doing it.

Q Would that go for all the banks in Phillipsburg and the City of Phillipsburg?

A I would say so. The only one left is the trust company.

Q And the only way for that one to grow is to merge [fol. 1240] with this bank after it has merged, in order to grow?

A No, I don't say anything like that No.

THE COURT: Counsel, we are getting a little bit afield, aren't we?

THE WITNESS: Yes.

THE COURT: To run down the analogy between the automobile business and the bank mergers.

Q I believe one of the benefits you said would arise from this merger, Mr. Tersigni, would be a larger lending limit; you said it would benefit the various businesses in the Phillipsburg area, is that right?

A Yes, I think it would be my advantage, too, that I would pay the bank less interest than I pay GMAC. GMAC just dropped their interest to six and three-quarters percent. And they have a pretty good hold on the dealer for this reason here. Because if you came in to buy a car from me, I could give you GMAC financing for five percent, just to compete with the banks, see. But being they know they have a hold on me, see, I've got to pay a lot more percentage than what you pay.

Q You say that your credit needs run around $150,000 a year; would that be the maximum at the peak season?

A I would say between $150,000 and $175,000, yes.

Q And you couldn't obtain that from the local banks? [fol. 1241] A Not that amount of money, no.

Q Not through a participation, for example?

A Well, I never tried a participating loan. I never tried a participating loan. To me it just seems that it just isn't feasible to try to split something up like that. It would cause too much disruption when you needed a title or, you know, when you needed financing, just who to go to. And it's a little easier to do it with GMAC, in spite of paying them a little more money.

Q And you haven't given any consideration to the Easton banks in that connection, as far as meeting your credit requirements?

A The only other finance people that I was solicited by would be the GAC Corporation in Allentown, which is a very big company.

Q As far as raising the lending limit at the Second National is concerned, have you given consideration to raising additional capital as a means of accomplishing that?

A I don't know whether that would help us any, just to raising more capital.

Q Do you know how your lending limit at the Second National Bank is computed; how do you determine at any given time what the lending limit of the bank is?

A I think our bank now is in the area of $80,000, I [fol. 1242] think. I could be wrong now. But I think it is in that area, eighty or ninety thousand.

Q Would you be surprised to know that it is over a hundred thousand?

A It is over a hundred? If it is, it isn't much over.

Q You don't know quite how the lending limit is computed, the percentage of what accounts at the bank or–

A The percentage would be ten percent of your time deposits.

* * * *

[fol. 1243] REDIRECT EXAMINATION

BY MR. MEYNER:

Q You were solicited by General Acceptance Corporation?

A In Allentown, Pennsylvania, yes.

Q How long ago was that?

A I'd say it was at least eight, nine years ago. Then they had a plan in Morristown that used to do–I forget the name of the plan Mr. Carey was with, I think Mr. Curry knows the name of it. They were soliciting quite heavy because the GMAC was opening an office in Morristown, and they were trying to grab some more business before they knew GMAC would get in.

There are people competing other than banks–most of them are finance companies because the local banks, they don't care much to–

Q You mean the local banks don't have the facilities?

A They don't have the men to go around and check the inventories; they just don't have the help to do it.

Q Would a new bank or merged bank be able to do that?

A They would not only be able to do that, a merged bank, I think they would be able to have a trust officer, which is very important.

[fol. 1244] WILLIAM B. LICKLIDER, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?

A 4 Sweetbriar Road, Summit, New Jersey.

Q What is your present banking position?

A I am president of the United States Savings Bank in Newark, New Jersey.

Q What are the total footings of that bank?

A Around 242 million.

Q Would you describe your business, educational, business and banking experience?

A I am a graduate of George Washington University, an A.B. degree in business administration, and major in finance and banking; upon graduation from college I went to work in Wall Street as a bond salesman in 1930, at which time I took post-graduate work at New York University, and have done that periodically since 1930; then I became an institutional representative, having savings banks, commercial banks and insurance companies as my clients; in 1941 I went with one of my clients on the other side of the fence, and became an investment officer with the New York Savings Bank; I stayed with them, except for the war years, until 1957; in 1957 I came here to participate in the merger of three savings banks, of which the United [fol. 1245] States Savings Bank is the surviving bank.

Q What was the general makeup of those three savings banks?

A There were three savings banks, two of them in Newark, the United States and the Franklin, and the Half Dime Savings Bank which was in Orange. And their footings were approximately 25 million of two of the banks, and the United States was about 60 million.

Q So this is $110 million all told?

A Fifty and 110, it was larger than that. Total footings at about 130.

Q About 130 as of what year?

A January 1, 1958.

Q You have been with the bank ever since the merger?

A Yes, sir.

Q Are you familiar with other mergers?

A Well, I have seen or have read about other mergers. I can't say that I am specifically familiar as to what the results were. I know very definitely what the results were as far as my own bank was concerned.

Q Was there any tendency as a result of this merger to decrease the interest rate on passbook saving?

A Oh, it was quite to the contrary. In the case of two of the banks, they were paying, I have forgotten what the [fol. 1246] going rate was, the larger bank, the largest of the three banks was paying a lesser than the going rate. And that bank also had the most depositors, of course, having the largest footings. So when the banks were merged, the rate was raised to the total bank; in other words, we were paying a higher rate than on $130 million of assets. So 25,000 depositors actually benefited by this merger at the very instance of that.

Q Did you at any time since the merger attempt to lower the interest rate paid to depositors?

A No, we would have been out of business because since that time, as you are familiar, since 1958, your interest rate paid to depositors, all interest rates have gone up, with a few little dips, but your trend has been very definitely up since that time.

Q What factors determine the interest rate that is paid to a depositor; does the merging of the bank have any effect on it?

A Well, the merging of the bank, it is perfectly obvious that one of the things that you do, in this case, in three banks, you had three of everything, three presidents, three vice presidents, three mortgage people, three of everything that you had, three home offices, if you will, so it is obvious that the result was that when you end up with a merger, then you have one institution, [fol. 1247] you have one president, you have one home office, the rest of them become paying and receiving stations, so to speak; you have a great economy of operation, it is rather self-evident, it seems to me.

And it is by these economies and by the larger base that you have with which to operate, more things that you can do, that you can—that your earnings are improved; therefore, you can meet the competition, you can pay more of your earnings to depositors.

Q Did you find that by reason of the merger interest rates charged to borrowers increased?

A Oh, no. Here again you—where you have a bank of sufficient size, of the size that we have, you are competitive in the home market, you had money to put out. If you were above the market you weren't going to get those loans, you weren't going to sell your product, which is money. If you were below the market, you were going to get an avalanche of money, so at the particular time, in our particular case, our rate was a little reshaded a bit because in getting ready for the merger, the banks were in a good cash position, we had to get that money working. And so we would in some cases shade the rate, in this particular case, to sell that product and to get that money working immediately.

Q So in your instance, you lowered the rate—

[fol. 1248] A It certainly wasn't raised, and I would say, yes, in some cases it was, in order to get the money out.

Q Now, have you held office, state and national office in savings bank activities?

A Yes. I have been a member of various committees and on the executive committee of the New Jersey Bankers Association; I am a past president of the Savings Bank Association of New Jersey, I have been on their executive committee for five, six, seven, eight years; I am on the Board of Directors of the National Association of Mutual Savings Banks; I am on one of their very important committees, I consider, as far as rates are concerned, and that's the Committee on—the Government Securities and the Public Debt.

Q Would you tell us something about the savings dollar and the competition that exists for it?

A Well, the savings dollar and the competition is very tough, particularly in these periods that we have had in 1959, 1961, and again in 1966, where everybody was out for the dollar. I don't only mean by that, I don't only mean banks. I mean Wall Street, if you will, the United States Government.

This is a case in point. You might recall in 1959, I believe it was, that the magic five's came out, the first time that the Government came out with a 5 per cent [fol. 1249] coupon on a relatively short obligation. The money that went out of savings banks at that time was tremendous. That was the beginning of the term disintermediation. And since that particular time we have had, with interest rates going up, you have had this thing of disintermediation.

By the same token, it brought in also the commercial banks, commercial banks selling their consumer credit, C.D.'s, not only that you had Wall Street, which is competing all of the time with us. A very interesting thing, so far as this year—in the first six months of this year, savings banks at the national level, National Association of Mutual Savings Banks report that their deposit increases are 20 per cent less than they were in 1967. However, the sales of mutual funds is 50 per cent higher than they were in 1967 for the same period of time. So it is obvious that our money is going to other forms of investment, so I can say that we are competing with Wall Street, with the Government.

Another thing that I think is a competition for all banking, too, is that the department stores or various companies that are doing their own financing or their charge accounts or their lease accounts and so forth—in other words, they are buying at the prime rate and they are lending it at some rate where they get 1, 2 per cent a month or something of that kind, so in effect your department stores are also competing with banks.

[fol. 1250] Q Are you familiar with an article recently that stated that Sears Roebuck's Company makes 18 per cent on their installment financing?

A Yes. You hear all kinds of things. Well, of course it is 1 to 1-1/2 per cent a month, and it varies in various cases.

Q Savings banks in New Jersey are allowed to have checking accounts?

A Yes, We do have checking accounts, and therefore we do compete with the commercial banks, and the commercial banks compete very definitely with us as far as savings are concerned.

Q How about the competition now for the dollar you take in and the dollar that goes out? How about the competition for the dollar that goes out?

A Well, for the dollar that goes out, I feel that we are competing with all 50 states, because we can lend on Government insured or guaranteed mortgages. We can lend in all 50 states.

Q All banks can do that?

A We savings banks can, and I think commercial banks can. I'm not too positive.

Q This is VA and FHA?

A VA and FHA.

On conventional loans the statutes permit us to [fol. 1251] make conventional loans within 50 miles of the border of the state. In our particular case we are competing with banks in Maryland because we can make loans as far as Maryland, in Delware and Connecticut. In Pennsylvania, obviously, and New York, obviously. So on conventional loans we are competing in those states that I just mentioned to you.

Q Do you have business in Warren County, for instance?

A Yes we do. We have depositors in Warren County. We have mortgage loans in Warren County. As recently as within the last two weeks we made a $675,000 loan there on a garden-type apartment.

Q You do have banking by mail?

A We have banking by mail. That is right.

Q You put three banks together in Newark, the Newark area. What did that do with reference to the other savings banks?

MR. WEINBAUM: We object to this questioning on this other merger. We think this is totally irrelevant.

THE COURT: Do you question his qualifications?

MR. WEINBAUM: No. We don't question his qualifications. We question the pertinence of a continuing discussion on this other merger.

[fol. 1252] THE COURT: Even though the area may be different?

MR. WEINBAUM: Well, in the particular–

MR. MEYNER: Here is an expert–

THE COURT: It has been urged that mergers do not cause decrease in interest rate paid to time deposits and do not cause increase in rates charged for loans. I think it is pertinent. You may be able to offer evidence to the contrary. I don't know.

MR. MEYNER: I call your attention that Professor Edwards–

THE COURT: Will you excuse me?

MR. MEYNER: Surely.

THE COURT: We are speaking of anti-competitive effects. Ultimately we are going to get to the point where I am raising the question just where is the alleged impact of the anti-competitive effect, on what services? It seems clear up to this point that one area would be in the rate paid on time deposits and the rate charged on loans. Do you have any comment on that?

MR. WEINBAUM: My only comment would be, your Honor, that Professor Edwards talked in terms of concentrated markets having various effects on interest rates.

[fol. 1253] THE COURT: Professor Edwards, whose testimony I recall very well, talked in terms of theories as to what would probably happen.

MR. WEINBAUM: That is correct.

THE COURT: He didn't demonstrate in the course of his testimony what actually did happen at any particular place.

MR. WEINBAUM: That is correct.

THE COURT: Now this testimony goes to the point of what actually happens.

Q You put the three banks together. What happened with respect to the other savings bank or savings banks?

A Well, this is a bit of background in Essex County, there were seven savings banks. As a result of the merger then there resulted four savings banks. We had a bank that was the size of half a billion dollars. That was the largest bank. The next sized bank was about $80 million. Then you came down to 60, so you had this great big colossus here, who because of their size, they you might say ran the savings bank industry. Everybody followed them because it was what they did everybody had to in order to compete, had to bring their rates up when possibly they couldn't afford it. The same was true on mortgages.

Now as a result of their merger then, you had a [fol. 1254] bank that came up to a size, as I have said, aroung 130 million, so then your disparity was from 500 million to 130 million, but at the 130-million the management or directors of those three banks said we can go out and we can pay for the management that we must have to make this a strong, viable institution.

If you will pardon this case in point, it started out that two banks were going to merge. They asked me if I would be interested in putting it together. I said no, for the simple reason

they couldn't afford to pay me. I was vice president of a bank in New York and they couldn't afford to pay me. Their size wouldn't justify my salary. Then when it developed, a year or so later, the three banks that merged, they said, "Now we can talk business" and we did talk business.

So what that did, first it gave I believe—and I say this in modesty—at least I thought so—a management experienced in all phases of savings banking as well as investment. Also it gave us the size, and the first thing we did was to have a setup, a data processing system, one that I had had in New York. We just came over here and copied it and put it into existence. It gave us the ability to go out and get a specialized mortgage man who was in all phases of mortgage lending.

Just one thing that occurred to me, one of the [fol. 1255] first things that happened, showing the advantages of that merger, there was a Catholic church up in Orange that was going on a building program of $675,000. They came to us, the merged bank. We could make the loan, but not one of them could have made the loan prior to the merger. In other words, we had enough assets that we could go ahead and make that loan, so I would say what the merger did, it really increased competition with the largest bank, because you had a bank that was projecting itself to cope with conditions as they were in 1958 and not as they were living back in 1928.

You had young management. You had more assets under one management group. We could go out and make ourselves more vital to the community as we did in the case of the church where they would have had to come out of their community in Orange and go to New York or somewhere else for their loan, and by the same token when you have a guy breathing down your neck or in a horse race a horse right up on the other horse's ear it sort of gives that front man a little more zest, and I think if nothing else it has created and made a much better savings bank system in the state. I think it increased the competition, and it also gave the community a chance to go to two large banks rather than one large bank.

* * * *

[fol. 1256] CROSS-EXAMINATION

BY MR. AUSTIN:

* * * *

Q Do you know of any mutual savings banks located in Warren County, New Jersey?

A There are no mutual savings banks in Warren County, New Jersey.

* * * *

[fol. 1257] Q How do you account for the size of the disparity then between total demand deposits and total time and savings accounts at your institution?

A Well, for one thing, the whole banking picture is changing. I think the thrift industry is in people's banks. Your checking accounts are convenience accounts by and large for depositors. We cannot lend or give a line of credit to a company, so why is somebody coming in to us and saying, "I have my checking account with you so we can establish a line of credit." We can't give them a line of credit, so therefore we have no business accounts, you see, and if you will the large depositor has his money, his checking account money in larger commercial banks. Ours are really the so-called handy check and the small convenience type of thing. As a matter of fact, in our Roseland office, it is the only bank in that municipality, and until we came up there the people of that municipality had no checking account facilities at all.

* * * *

[fol. 1258] REDIRECT EXAMINATION

BY MR. MEYNER:

Q You spoke about not doing business or having a branch in Warren. Would you describe the prospects for change?

A Well I hope that the next time that question is asked of me that it will be after the legislature has convened and a bill

which has now passed the Assembly which will expand the banking laws or the branch banking privileges in New Jersey will have passed the Senate, and that provides for statewide loan companies and branch banking in three districts, one of the three districts being the northern counties, of which Warren is one. We are only in eight counties of the state, so in other words 13 counties do not have the benefit of savings bank facilities on mortgages and so forth.

As I started to say, I think that once that legislation is passed that not only our bank but other banks are going to be looking to the other counties where there are no savings banks to move in within their district. For example, in Bergen County where most of our mortgages are there is no savings bank. There is no savings bank in Passaic County.

Q But in this three district branch banking, Newark would be in the same county as Warren?

A The same district as Warren.

[fol. 1259] Q The same district.

A That is right.

MR. WEINBAUM: We would like the last couple of questions and answers to be stricken on the ground that what the legislature might or might not do is not a factor which should be taken into account by the Court.

THE COURT: Well it depends, counsel, on whether I reach a decision in this case before the legislature acts. I certainly feel that I would have an obligation, if there is a legislative enactment subsequent to the hearing in this case which goes to the merits of the matter, to give consideration to that legislation. Certainly if the legislature does act and the enactment is in effect I think you will concede that your potential competition might increase very substantially in this rapidly-developing area.

Do you disagree?

MR. WEINBAUM: I think the potential competition picture may change on this point, your Honor.

THE COURT: If at the time I reach my decision in this case there is no such legislative enactment, I can't indulge in speculation that at some future time the legislature will act. I will apply the law as I find it at the time I write my opinion.

[fol. 1260] MR. WEINBAUM: Sure

THE COURT: Are you satisfied?

MR. WEINBAUM: Yes.

MR. MEYNER: For the record, I might say the whole case deals with probabilities.

THE COURT: That is true.

* * * *

[fol. 1261] HAROLD M. COOPER, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?

A I reside at 17 Split Rail Lane in Dallas, Pennsylvania.

Q And what is your present position?

A I am president of the Kingston National Bank in Kingston, Pennsylvania.

Q Will you tell us something about your educational, business and banking experience in brief form?

A Well, I graduated from Phillipsburg High School in [fol. 1262] 1929 and immediately went to work for the Phillipsburg National Bank & Trust Company, but only for a few months, and then I was transferred to the Alpha National Bank in Alpha, New Jersey.

Q That was an affiliate?

A That was, in a sense, an affiliate, yes. I was there from February, 1930, to November, 1931, when I accepted a position with the Treasury Department in the Insolvent Division of the National Banks, and helped liquidate the three national banks that had closed in that area. I was there from–

Q What were the three?

A The Peoples National Bank of Blairstown, the Belvidere National Bank, and the Portland National Bank, Portland, Pennsylvania. It is just across the river, northward of Belvidere, on the Delaware River.

I was there from–let me see–November of 1931 until July of 1932, when I accepted a position as a clerk, a teller, and general ledger bookkeeper for a new bank which had been formed in Belvidere. Unfortunately, Belvidere had lost both their banks. There were runs on them. They were forced to liquidate. New capital from outside came in and they offered me a position, primarily because I knew part of the territory, knew some of the people that had been dealing there–

[fol. 1263] THE COURT: When was this?

THE WITNESS: July, 1932. The 18th of July, as a matter of fact. A brand new charter and a brand new bank.

THE COURT: There were a number of banks liquidating then.

All right.

Q You stayed with that Belvidere bank until when?

A I stayed with that bank until October 15th, 1948.

Q And what were your positions with that bank?

A Well, I left it as executive vice-president.

Q And then where did you go?

A The Union Bank & Trust Company in Bethlehem as treasurer and vice-president.

Q This was in—

A 1948.

Q And how long did you stay there?

A Until March 1st, 1964.

Q And would you describe the growth of that bank while you were there?

A Well, it was the second bank in position in Bethlehem at the time. And deposits in 1948 fluctuated between fourteen and sixteen million dollars.

Q And when you left—

A We Had—I beg pardon?

[fol. 1264] Q When you left, what were they?

A About seventy-seven million. We had only one office. I don't know how well you know Bethlehem, but we were on the south side, not too far from the steel plants, the main office. We had one office, under one roof.

Q And how many did you have when you left?

A We had five offices all together. And two of those were offices that had previously been maintained as main offices for other banks. We merged with two institutions. We merged with the Peoples Bank, a State bank, on June 19th, 1959; and on December 30th, 1960, merged with another State bank in Allentown. It gave us an outlet in Allentown.

Q And how long have you been with the Kingston bank?

A Since the 1st of January, 1965.

Q Are you familiar with banking in the Lehigh Valley?

A Yes, sir.

Q How long have you been with the Kingston bank?

A Well, as of the mo ent, about three years and eight months.

Q Have you been tak g banking courses since you left school?

A I have been on ca specialized studies, but e vuses of a good many schools of [fol. 1265] classes at NY since 1951 I regularly attended finance, not beyond tha primarily in money markets and particular profession. point, all relating to our own

Q What do you believe be the area served by this Union Bank when you were an exo tive of the Union Bank?

A Well, we consider Northampton County, Warren County in New Jersey, and portion of Hunterdon County. We did business—now, North pton County—and I should have mentioned Lehigh Coun because we are in Lehigh County—Lehigh Coun and Northampton County. Northampton County exte d northward to Monroe County. We never considered that ir area. But Lehigh, Northampton and all of Warren County ecause we did business in all of Warren County. And som of Hunterdon, but not too far beyond the little town of E msburg. We never got to Clinton.

Q What areas of ban g did you endeavor to enlarge during this period?

A Well, primarily de its and loans, loans into the community. But that was so happened, secondary to the deposit growth. Back in 19 we more or less grabbed the ball and ran with it as regar increased rates paid on savings deposits. At the time most the banks were paying one and a half percent. We raised it t vo and a half percent in the area, broadcast it on everything e [fol. 1266] didn't use TV, but we used every medium at anybody ever heard of to broadcast it.

Q Describe some of the dia.

A Newspapers, for the st part, and radio. There was no radio in Jersey that would be covered by Easton, so we were in Easton. We didn't go on Stroudsburg station, but we took newspaper ads in the W ington Star, actually—in little Washington, New Jersey. W ad a story to tell. We were paying a lot of money, we though nd we got in a lot of money, as a matter of fact. When I say loan position was secondary, it actually was. It put us in position where we had a lot of money to lend and that se s scurrying all over this territory that I have just related you. I mean we had obtained

customers from this broad area and we had to accommodate them. We discovered that when we were taking their deposits we also had to accommodate them in other lines.

[fol. 1267] Q Well, now, you increased your deposit rate by a higher increase of payment on your deposits?

A Yes.

Q And then what did you do; you found that you had so much money, what did you do then?

A Well, broadened our scope in the mortgage field, and we expanded our consumer credit lending, actually, and accomplished that by making an overall reduction in the rate.

We had a slight problem. We had a lot of money to increase, and you have to maintain certain ratios, and we didn't want to put it all in fixed assets of investment nature or governments or anything like that, so we actually reduced the rate and put on a terrific campaign in the consumer credit field. The territory we had discovered through some surveys and marketing approaches was just sort of lacking, without a proper approach to it.

Q When you say "without a proper approach" what do you mean?

A Well, the banks hadn't been too aggressive in them, but Allentown is a good-sized city, and there are two banks today, you see them mentioned and read a lot about them in the newspapers as regards merger attempts, proposals and so forth. They didn't even have consumer credit loans until we put such pressure on them—this sounds terrible—until [fol. 1268] we put such pressure on them in their areas that they were compelled to go into the field of small loans.

Q How about the Easton-Phillipsburg area?

A That was a great territory to operate in, a great territory. That was a joy and a pleasure.

Q How far did you go in commercial and industrial loans?

A Not many industrial loans, not many industrial loans as we discovered that they weren't generally sought after; at that time there wasn't too much expansion as far as all these industrial loans and so on and so forth were concerned, programs, and most of them were well established, and, of course, had either financed themselves through the equity market or probably with large commercial banks elsewhere. We lent mostly to small business people, oh, I don't think our loans ran over $500,000, we didn't have too many on the books beyond $500,000.

Q But–

A They weren't large banks, we had some pretty good-sized businesses there that required that.

Q What vying did you have from other financial institutions with respect to attracting the dollar for deposit?

A I am sorry?

Q Well, were there other people offering more on [fol. 1269] the deposits than you were offering?

A Not at the moment. You see, that was a large factor in this whole thing, everybody sat still because they didn't think it a propitious time, or probably that we could keep at it too long, but as you well know, history has proven them to be quite mistaken about that, because it came in from five percent, from three to five. Incidentally, we went to two and a half percent, and the rest stayed at one and a half, and suddenly in more than a year, about fifteen months, they discovered what was happening, and they elevated to two and a half percent; whereupon we immediately raised to three, and under the conditions of the law at that time that was as high as we could go. But it made money for us.

Q Did you find that other areas were also trying to get this dollar from the depositor?

A Oh, other areas–you are talking about–

Q How about mutual funds?

A Are you talking about other communities?

Q Other financial–

A Oh, savings and loans, heck, we have been forced into this thing by the savings and loans.

Q Where did this come from?

A Right in our own community, there is a very aggressive one in Easton, and two in Allentown and two in Bethlehem who [fol. 1270] were just knocking the ears off of the commercial banks, good heavens sakes alive. In order to protect ourselves, we were actually losing money, we were losing deposits.

Q What other areas, insurance?

A Well, not to that great extent, I couldn't say insurance to any great extent.

Q Mutual funds?

A Mutual funds, we had some aggressive boys there who set up business and were quite aggressive in that.

Q How about on the loan side, competition from other financial institutions?

A Well, there was always a certain amount of that, which there always has to be because in the most part they are doing it to protect their own interest with their own people. We had a good marketing program and a very, very well concentrated—at least I thought it was—aggressive call program, solicitation. Gee, we called on people, we had them—they called in Warren County, they called in Easton, Bethlehem and Allentown, that was just like rolling out of bed in the morning, but we had specialists call in Easton, which was a great territory, and into Warren County, never down in Hunterdon, I can't say that we ever did too much business there.

Q Would you describe what happened with respect to the mergers of your banks, of your bank or—describe [fol. 1271] the mergers that occurred in the time that you were with the Union Bank.

A We only had two. We merged with—the first one was with the Peoples Bank.

Q How big were you when you merged?

A Close to forty million dollars.

Q You merged with another bank then?

A Yes. They were—

Q When you went with the Union Bank, what were the total assets?

A Well, they fluctuated between fourteen or sixteen, let's say, good, solid dollars, fourteen million.

Q This was in what year?

A 1948.

Q And when was the first merger?

A In 1959.

Q How big were you when you went into the merger?

A Forty million dollars.

Q So from the time you went there until 1959 you grew from fifteen to forty million dollars, sixteen to forty million dollars?

A Yes, approximately.

Q How much was the bank that you merged with?

A Nine million dollars, just a couple of hundred thousand dollars under nine million dollars.

[fol. 1272] Q Then it became a forty-nine million dollar bank?

A Yes.

Q Then when was the next merger?

A Eighteen months later, the third of December, 1960, and they were another nine million dollar bank, but with a delightful outlet in Allentown, right across from Hess Brothers store, which was a natural.

Q So we have forty million, nine million and nine million?

A It took us up to 1957 or 1958, yes.

Q You left there when, in 1965?

A No, 1964, March 1st, 1964.

Q How big a bank was it?

A Seventy-seven.

Q Did you find that as a result of these mergers that your passbook interest rate was lower?

A Lower? No.

Q What happened to your passbook interest rate?

A It stayed the same because there happened to have been a ceiling on rates, you couldn't pay more than the prescribed amount that we were then paying those people.

Q What happened to interest rates to consumers?

A Well, we broadened our competitive lines, and in order to do so we had to shade somewhat.

* * * *

[fol. 1276] Q What would you say would be the effect of the merger of these two banks as you know them?

A My answer is predicated on knowing exactly what exists in the area. I know Easton, Warren County like I know the back of my hand. I am not trying to set myself up as anything except to say to you in answer to your question it has to improve competition in the area. It couldn't do anything but improve the competition.

THE COURT: Why do you say that?

THE WITNESS: Because—the banks in that area have not concerned themselves about taking modern services and facilities to the community. I am sorry I have to say that.

Q What could they do as a result of this merger?

A Expand their services to an area that has been waiting for it for a long time and can use it.

Q Can you name specific measures that can be adopted by the merged bank?

A This is generally accomplished with the proper talent and the service that people need most today. You have to [fol. 1277] attract some new money as far as deposits are concerned because you need money to lend. Despite the fact you might not have the ratio that banks would normally have today in the lending field, despite that you still would have to have more dollars

Q How about trust business?

A Trust, well you have to go further afield for trust, go further afield for trust. It is a good field for small commercial loans to the business people. Unfortunately, they go elsewhere for that, not always because of limitation of—legal limit. It is know-how.

DIRECT EXAMINATION

BY MR. ROACHE:

* * * *

Q What would this [fol. 1278] enable the bank to do?

A I mentioned talent, and I would like to elaborate on that.

Q Would you?

A I would hope that they would seek some new management, younger staffers.

Q Do you feel there is need for any management in a specialty field?

A Well, I mentioned trusts. That is a field of itself. In order to do the job in the area they certainly need a mortgage man, a credit man, which is just more than for files. He is a commercial lender, you understand, and a consumer credit man, if they don't have one already, to expand it, do a much better job. When you listen to some of the testimony of these automobile men around here today, certainly somebody should find a way to do business with them.

Q Is soliciting and canvassing of an area vital to improve business?

A Oh, yes. I wouldn't know how to get along without it. [fol. 1279] People don't come in to see you any more. You have to get out to see them.

Q Would you feel this would have to be a function of these people too, to move their business?

A Indeed.
MR. ROACHE: That is all I have.

CROSS-EXAMINATION

BY MR. WEINBAUM:

Q Mr. Cooper, how big is your bank, the Kingston Bank?
A 32 million.
Q And how far are you from Bethlehem?
A Bethlehem, 78 miles.
Q In which direction?
A Due south.
Q What county are you located in?
A Lucerne.
Q Would Lucerne be adjacent to Montgomery County in Pennsylvania?
A Oh no. Right under Lucerne is Monroe. A little bit to the east is Carbon. Next to Carbon going south would be Lehigh and to the east of Lehigh, Northampton. To the east of Lucerne is Lackawanna. To the west is Columbia.
Q And can you describe for us what type of work you were doing at Union Trust when you left in March of 1964.

* * * *

[fol. 1280] A Yes sir, March 1, 1964.
Q And your bank grew from 16 million to $40 million in a period of what time?
A Well it grew from October 15, 1948 to June of 1959. In the meanwhile we had opened one additional office in a more—a newer section of Bethlehem.
Q In 11 years your bank grew by about $24 million.
A Yes. 16 from 40, yes, 24.
Q This was without a merger?
A No merger, no.
Q How did you embark on such an ambitious growth record?
A Embark?
Q How do you account for such growth?
A Well, in 1954 we increased the interest rate on passbook savings and literally the money came in fast. We had trouble accounting for it and putting it to work. There is no

particular secret to that. Anybody could do it. It wasn't anything we embarked upon. It just happened. Anybody could have done it.

[fol. 1281] Q Did you have particular types of lending specialists when you were a $40 million bank?

A Oh yes, yes. We were already. You heard me refer to some surveys we made and Washington people we employed, and our own staff. We had already sized up this area and knew that it was a potential new business area, so we had a mortgage man, yes, a consumer credit man.

Q When did you bring your mortgage man in?

A We brought him in in 1951.

Q How big were you then?

A 21-22 million probably.

Q Did you bring him in from outside?

A Yes.

Q Did you have a commercial and industrial lending officer?

A Oh yes.

Q Where did you get him from?

A I got him from Philadelphia.

Q How big were you when you hired him?

A Well–

Q Did you bring him in about the same time as the mortgage officer?

A They all came about the same time. You see, I went there as vice president and treasurer in 1948, and just two years from the time I went there the president of the bank [fol. 1282] died, and I was ushered into office, and as of that moment we started to put this thing together.

Q And you went out and you started hiring people?

A Oh sure.

Q When you were about a $21 million bank?

A Yes.

Q Did you get out and hire a trust officer at that time?

A No. We had an excellent trust officer, but we started to supplement his staff.

Q Was he a full-time trust officer?

A Oh yes.

Q And he was there before you came to the bank?

A Yes he was.

Q In a full-time capacity?

A Always in a full-time capacity.

Q What makes you think, Mr. Cooper, that a bigger bank is going to be serving the community better?

A Well, a larger bank will serve the community better.

Q Doesn't this depend, Mr. Cooper, on the policies of the management?

A Oh, certainly.

Q Do you know the extent to which these two banks separately are serving the community? You don't feel they have been serving the community properly?

[fol. 1283] A What they have done has been done properly, but they haven't done it as extensively as they might have.

Q Would you make such judgment on the basis of the growth of the banks?

A They have not had a bad growth.

* * * *

Q Do you feel these banks are growing adequately?

A They don't have bad growth. It is pretty hard not to have growth today with the economic picture the way it has been. You would almost have to close your doors not to have some growth.

Q Some banks are growing much faster than others.

A Yes, sir.

MR. WEINBAUM: I would like to hand the witness a copy of Government Exhibit 50 now in evidence.

Q Mr. Cooper, this exhibit sets forth the growth [fol. 1284] of commercial banks by total deposits from the years 1962 through 1967 in the Lehigh Valley area. I would like to address your attention to the first page which indicates the growth of the Phillipsburg National and the growth of the Second National.

A Yes.

Q It is a fact, is it not, that the Phillipsburg National is up near the top of that listing?

A It is No. 8, as a matter of fact. Yes, it is near the top.

Q And Second National is?

A 26th.

Q And the Union Bank & Trust Company?

A 35th.

Q Out of how many banks on that list?

A 41.

MR. WEINBAUM: And I would like to, if I might, your Honor, hand the witness a copy of Government Exhibit 51 now in evidence which indicates the growth of loans and discounts of commercial banks in the Lehigh Valley area.

Q Can you tell us where Phillipsburg National and Second National are on that list?

A The same number of banks, 41 banks, are listed here. Phillipsburg National is No. 8 and the Second National Bank [fol. 1285] is No. 11.

Q Do these comparisons mean anything, Mr. Cooper, as far as the way banks are going out into the marketplace and conducting their business?

MR. MEYNER: If your Honor please, I would ask now if he is going to ask questions, further questions, that this witness be entitled to have before him both of these exhibits.

THE COURT: I see no objection to that.

MR. WEINBAUM: No.

THE COURT: If you are basing a question upon something shown in the exhibit.

(Question read back to witness.)

A My answer to that is not necessarily.

[fol. 1286] Q You don't feel that the growth of banks—when this growth doesn't fast exceed the growth of the majority of banks in this area—you don't think that this means—

A I think you would have to know the situation that existed in each of the areas in which these banks are located. The first thing that comes to my mind is whether they have had undue industrialization which brought in a great deal of residential building, or something like that, you see. A lot of these banks listed on here obtain the bulk of their business from such sources. And unless you knew the particular story, I don't know how you could answer that any other way.

Q What would that have to do with total deposits?

A Sir, does not expansion, both industrial and residential, provide for an expansion of deposits? I wouldn't know where else it would come from.

Q Well, are you saying that a given area may be growing faster than another area?

A Yes, sir.

Q Do you know anything about the growth in the Phillipsburg area?

A I watch the banks more than I watch the community.

Q Excuse me?

A I observe the banks more closely than I do the area. I mean, you know, streets and development areas, and so forth. [fol. 1287] Q Are you aware of the growth of these two banks in the commercial and industrial lending area?

A I have read a brief and I would say that they haven't experienced much growth.

THE COURT: You say you have read a brief?

THE WITNESS: Well, I have seen some figures. I have seen some figures on actually what they do.

Q And what do these figures indicate with respect to their growth in the commercial and industrial lending area?

A Well, I know what they are today. I don't know what they might have been two years ago, or five years ago, or ten years ago. All I can say is that they don't do too much in that particular area.

Q Do you know how they have grown in this area?

A I don't know how they have grown in that particular area, no.

Q Mr. Cooper, at the time that you left the Union Bank, where were the branches of the bank located?

A Well, the main office was at 52 Broad Street. We had an office which had originally been the office of the Peoples Bank & Trust Company on Third Street. The original bank in the Flatiron Building was at the corner of Fourth and Broadway. There was a newer office on Shanersville Road, which has since been removed to Eighth and Eaton, a brand [fol. 1288] new office opened just a few months ago. And then there was the office in Allentown, which had been the Liberty Bank & Trust Company's main facility. There are for Union Bank at the present time plans to expand to more branches. But that is where they were at the present time—I mean that is where they were when I left in 1964.

Q Do you find the branches are important to you in serving your customers?

A Yes. It is very hard to do business under one roof today, awfully hard.

Q In your solicitation efforts, Mr. Cooper, you indicated that you solicited in a very broad area?

A Yes.

Q Did you find any reluctance on the part of people in the remote areas to deal with your bank as opposed to the local institutions?

A Well, a lot of our calling was on people who dealt with those banks and quite often we were able to accommodate them, primarily because they couldn't have received it in the small banks in the area in which we call. There seemed to be no particular reluctance. They needed banking facilities.

Q Whether in the form of a solicitation or in the form of placement of a branch office?

A Well, they didn't come—they weren't sitting there waiting for us to solicit them. They had expanded. They [fol. 1289] had expanded to a point, in most instances, where they just couldn't get the credit at their home bank.

Q From what area, Mr. Cooper, did your bank draw most of its business while you were president?

A Lehigh, Northampton, Warren Counties.

Q Didn't you derive the vast bulk of your business from the Bethlehem area itself?

A Oh, naturally.

Q And has your branch in Allentown been instrumental in cultivating the business which you have obtained from the Allentown area?

A Yes, they do a good job there. They do a good job there, particularly in the trust field.

Q Do you have any rule of thumb, Mr. Cooper, with respect to what the service area of a branch office would be?

A Not actually. It is all according to where the next branch would be. Sometimes it could be quite confined. It is all according to where the location of your next office is, or where the facility of your competitor might be. No hard and fast lines. We solicit everywhere.

Q How many solicitors did you have on the road when you were president of the bank?

A Do you mind dropping that "road" bit?

Q Sure.

[fol. 1290] A I don't want you to get the impression that there were just people who went around knocking on doors. These were respectable, well-trained—

Q I didn't mean to infer—

A —not on the road. I mean they all had nice offices and they had conferences there. They went out and called on people. It is a form of solicitation, of course. We had five.

* * * *

[fol. 1292] WILLIAM J. KINNAMON, called as a witness in behalf of the intervenor, testified as follows:

DIRECT EXAMINATION

BY MR. ROACHE:

Q Mr. Kinnamon, where do you live; what is your address?

A I live in Flemington, New Jersey.

Q What is your present position?

A I am president of the Hunterdon County National Bank of Flemington.

Q Where is its main office, Flemington?

A In Raritan Township, a municipality immediately adjacent to and actually surrounding Flemington.

Q What is your education and your banking experience?

A I graduated from the University of Maryland in 1930 in the College of Business Administration, and majoring in accounting, and then went to the Graduate School of Banking in Rutgers, New Jersey.

Q When did you first go with the Hunterdon National Bank?

A August 26th, 1934. And I have been there ever since.

Q Was this your first banking experience?

[fol. 1293] A No, I was with the office of the Comptroller of the Currency, in the Division of Insolvent National Banks, beginning in 1931 until 1934, from the fall of 1931 until August of 1934, and was up and down generally the East Coast, here, in various insolvent national banks.

Q And prior to that working experience, what experience did you have?

A I was with an industrial engineer in Maryland.

Q What are the present assets of the Hunterdon County National Bank?

A Our total resources are a little over sixty-one million dollars.

Q What are your deposits?

A Less four of capital funds, approximately fifty-seven million.

Q At the time that you went with the Hunterdon County National Bank, what was the size of the bank?

A Three million eight.

Q And has your bank had any mergers since the time you went with the bank?

A Yes.

Q Would you list them?

A We have had three. In 1947 we acquired the First National Bank of Highbridge, New Jersey, which was practically two million, slightly under two million. And a year later, [fol. 1294] in 1948, it was the Amwell National Bank in Lambertville. And then in 1959 we acquired the Union National Bank of Frenchtown. The Amwell was a little less than two million and the Frenchtown unit was about four million.

[fol. 1295] Q And what were your assets after that last merger?

A Approximately 30 million.

Q What do you consider to be your banking market or your service area?

A Well, to the north we approximate Washington, New Jersey, and Warren, and coming right around the bend, we hit the Delaware River at Phillipsburg, and Easton, and we swing down through Riegelsville both on the Pennsylvania side and the New Jersey side, and then out near Doylestown, west down practically to Trenton, up the other side through Somerville, and back to the place of beginning, of the Washington area.

Q So your area is all within this circle that you have just made?

A That's right. And we have located offices on practically every bridge between Easton and Trenton in order to serve those areas because those are the only routes to get there. East or west.

Q You have accounts from all the localities you have just mentioned?

A Yes.

Q What type of accounts are they?

A And loans, we have checking and savings accounts from those areas as well as loans. Mostly the loans farther [fol. 1296] away are small business loans and real estate mortgage loans.

THE COURT: With reference to the offices that you have, where are your branch offices?

THE WITNESS: Coming down Route 28, or rather, it is 70, 22, coming across the top of our county, which services the north end of it, we have one at Clinton, New Jersey, we have one in High Bridge, New Jersey, and one is really on the northeast side at Whitehouse, New Jersey.

Going down the river, just below Phillipsburg or Alpha, you have one at Spring Mills which covers Three Bridges, Milford, Riegelsville and the Warren Glen Bridge, being strategic locations where people have travel habits.

Next one down is Frenchtown, next one is Stockton, and finally Lambertville is the most southern one.

THE COURT: I was primarily interested in what is in the Warren County area, Lehigh Valley area?

THE WITNESS: Frenchtown, Spring Mills, Clinton, High Bridge and Whitehouse. High Bridge serves a little more towards the Washington area than the Easton-Phillipsburg area.

THE COURT: Thank you.

Q Do you know if the Phillipsburg National Bank [fol. 1297] does any business in your area?

A Very definitely.

Q Now, by your area, what did you mean by "your area?"

A Well, I know of one just recently, just on the edge of Flemington, a real estate mortgage loan. I know of other loans that have been made in that area.

Q How do you actually know that they have business in that area?

A Well, we operate together and compete together. They called me for a credit reference on that loan, and the value of the property, and I have a neighbor that is right next door that informed me that this loan was made through Phillipsburg National Bank.

Q What is your experience as to the distances people will travel to bank?

A Well, frankly, with our present highway system, and it is being improved all of the time, we find that it is a mile a minute, practically, from an easy yardstick angle, and they will travel the distance—it is just 23 miles from Whitehouse Station, for example, to the Phillipsburg-Easton area. And we have savings accounts that have come right down the highway, and depending upon the travel, the travel habits of these people coming east and west, they will bank at either our Clinton office, High Bridge Office [fol. 1298] or Whitehouse office. But in the reverse, we have these that also go north and south, but the point is it proves the point of distance of travel with the highways, that are so helpful.

Q Is this the purpose of your branch offices?

A Very definitely. We feel you have got to take these offices to places of convenience, with parking, and they have got to be respectable units, and you have got to have real men there capable to serve these people. And with that it is a little bit like the cowboy on the horse going to mess shack, he drives right to the front door and steps off. And that's what the public seems to demand, right into a parking lot, there is the unit with the drive-up windows and so forth; they just reach in, never get out of the car, and go on their way. That all costs money.

Q What is your experience as to the distances people will drive to shop?

A Just about the same. If there is nothing closer than that that has all of the facilities. For example, we used to have in the Frenchtown area, which is part of this area, little local stores that were very disappointing. We have a whopping shopping center at Flemington and a whopping one new up in the Phillipsburg area, and those people go in both directions, depending on their shopping areas. If they are employed towards the Phillipsburg area or beyond they [fol. 1299] will go to the Phillipsburg area and shop. If they happen to be employed towards Flemington and beyond they will go in that direction, which is the opposite direction.

Q What is your experience as to the distance people will travel to work?

A Well, generally that same distance, but we have actually isolated instances where they will go beyond that. We have people driving down actually into the Newark area, in the fringe of the Newark area now on employment. It is not uncommon at all to run to the Plainfield area and the Manville area, in that

direction. We have people living on top of Holland Township, which is Musconetcong, the border of Holland and Warren, a great and lovely new community there, that actually ride right up through Phillipsburg and Easton to Allentown and Bethlehem, to say nothing of those who live in and go to the points in between.

* * * *

[fol. 1301] Q Are you familiar with Phillipsburg National Bank?

A I know their statement, I know where they are located.

Q Do you follow their growth and activities of the Phillipsburg National Bank?

A I don't in detail, but I do in a general way, to see how they progress.

Q Do you follow Second National Bank also?

A I follow all of those banks in the surrounding counties in the same way, the ones that are close to us intimately in detail, but these that are on the outer fringe, why, we always keep a general comprehension of them.

Q Did these mergers that you had help you grow?

A No question about it.

Q How did they help you to?

A Well, first off, the dollar was getting a much lesser net return as things went on, and it took more dollars with a less return per dollar to stay even, so actually we were on almost a rat race for size to maintain our earnings. Now, when we say earnings, when you get to a certain size, and particularly in our kind of community, you have got a great spread of population and you can't sit at a desk and get those people in the hills to come in, you have got to [fol. 1302] go out there and get them. What we need are actually capable peddlers, for lack of a better expression, peddlers that have built-in credit departments, that have the ability and the authority to extend credit and solicit loans, to solicit accounts. So that from an earnings angle you just have to have the means to buy capable young experienced help that is aggressive. And today, that is becoming more and more difficult. And each of these branches gave us a base, and it is an old story that a new branch is extremely slow, but an old branch will pick up your momentum and will acquire—when I say an old branch, I mean a branch located where a bank formerly existed—your rate of growth is much faster. That gave

us the growth to have gone right up through these years to our present size. We have a little fluctuation of manpower there.

But to continue this growth of branches, and serving and reaching more people, we had to have more young people and capable people. And the only place to get it is in the universities.

Q In what areas of your business did you grow?

A Because of our highways bringing people, real estate mortgage market was a very logical one. Along with that kind of loan came the deposits from individuals. As individuals became more numerous, businesses came in, small and large, and we actually gained both from the deposit side [fol. 1303] and the loan side. Along with those people came consumer credit, automobile financing. With the businesses came accounts receivable financing. All of those fields take experienced and capable people, and to continue this service and expand it, it is like a wheel within a wheel, you begin to give the service, and you need more and more help, but you need all the more deposits all of the time in order to create the earnings to pay for those people.

And we have given up on the so-called fellow that isn't highly qualified; he is almost in the way. But the fellow that you pay some real money to because of his ability is the cheapest man you have got on your payroll.

[fol. 1304] Q What do you do today to obtain personnel?

A We recruit from four or five universities. We go out to see these people, and you speak to about—you average—it takes forty people you interview to get one fellow worth bringing home, and I talk to about 200 fellows each year to get three or four. I like to have three or four come in and it takes a youngster that is worth having right out of college, undergraduate work, from $7,500 to $8,500 to bring him home. That is with no experience whatsoever. You have got to train him though he has had all his college courses. You go to graduate school. You can't interest them for less than $13,500, and you may have to go to $15,000 to get the right man, to get the right man you want. Some of those graduate school boys have had experience because of their added few years. A lot of them don't have anything more than a college education, but they have got the material between the ears, and apparently the ability to get up and go and pound the sidewalks and bring these people in and do the job soundly.

* * * *

[fol. 1305] Q Do you have a fulltime trust officer?

A That is me.

Q Do you have a fulltime commercial and industrial officer?

A Yes, we have several of those.

Q Do you have a fulltime mortgage lender?

A Several of those.

Q What do you pay these people?

A I am at $36,000. The lending men, the commercial credit boys are at about $22,000, and we have got about three of those officers, and then we begin to get our subordinates who are the youngsters who are coming along. One of these boys I picked up from graduate school starting at $11,000 about four or five years ago, and he was at $17,000, so that is the bracket. If they produce you have got to pay them to keep them.

Q What about the mortgage officer, what do you pay him?

A $22,000.

* * * *

[fol. 1308] Q Do you compete for business with only commercial banks? Do you compete with other commercial banks?

A No, it is every way.

Q Who else do you compete with?

A Savings and loans. They come in from the same distances we do, even lesser ones, and if you are from Newark you have got the bigger ones, and you heard Mr. Licklider on the savings banks, and those are only a few of those that come in. You have got your mutual funds. You have got your credit unions, and all of the industrials out there. We have that problem. You have got your insurance companies. I think there is a big field in the insurance companies, because these fellows are all lenders on the [fol. 1309] cash surrender values of life insurance, and ever since the rate went up those old policies have a five percent loan rate and they are doing business today on five percent money. Banks can't compete with that, and I am sure the insurance companies would rather not, but nevertheless it is a factor, and then all of the finance companies—you have got competition with installment loans, and that is only a few, actually. Everybody that is seeking money is looking for that dollar.

Q Do you feel that you can compete with the stock market for savings?

A Yes. That is another one. There is no question about it. Money will go into those constantly.

Q What institutions do you compete with for mortgages?

A Well, you have the savings and loans, the savings banks, the private lender, and that would cover pretty much—well, the insurance companies are out on mortgages every so often, not so much just now, but that covers—that covers the field pretty well.

Q Do you have automobile financing?

A Yes.

Q Do you do floor planning?

A Yes, we do both floor planning and dealer financing, taking his indirect paper, and we also handle it directly [fol. 1310] with the customer when he walks in.

Q Who are your competitors in floor planning?

A The usual boys in the area. You have got GMAC and various other lesser organizations, CIT and the usual groups that cover that type of thing. Every once in a while you will have the small finance company that will make a drive through there.

Q How are your competitors on consumer loans?

A Well, there again you have got such as Sears Roebuck, they not only sell but they finance it, and, of course, the General Electric has its own financing on their dealers, and so forth, so practically every appliance outfit has its own financing on that kind of paper, on appliances and so forth, even on home improvement loans with air conditioning and all the various things that go into a home improvement loan. There are lenders who are constantly soliciting that type of thing.

Q In your experience in lending money to automobile dealers on floor planning what would you say is their limit, the lending limit required for such type of financing?

A Well, if you have got a fellow who really moves some cars, particularly 300 to 450 cars, he is going to need $350,000 or $400,000 just for floor planning alone, and you are into his daily paper yet. That is all right if it is not renewed, bills receivable, but installment stuff—thinking [fol. 1311] of limits—but any time that you begin to get an accumulation of discounted paper, then your legal limit begins to come in if it is unrenewed and so forth—I mean if it is renewed—so that it really takes a pile of money. I don't think you have got a bank in the Easton area big enough to handle a real volume of that kind of thing, and I know they don't in the industrial area.

Q Do you know the lending limit of the Phillipsburg National and the Second National?

A Approximately $100,000 apiece.

Q Do you think that they are in a position separately to engage in this type of financing?

A No. There would only be fifty percent of the amount, and that would let them take care of the bottom of the dealers as far as size is concerned, but it would be a step in the right direction and with growth they could make it. You realize for ourselves we accomplish this legal limit of our own with $300,000. We have been plowing back earnings for years. We have not paid cash dividends for years. We have been plowing back dividends for years just to meet the growing requirements of our community.

Q What would be a step in the right direction?

A The combination of the two banks would be a step in the right direction because it means they would be from two hundred to two hundred and fifty thousand—whatever these [fol. 1312] figures add up to there, and that is certainly a lot better than half of that.

Q Do you believe that their proposed merger would be harmful to your bank?

A No. I am delighted to go anywhere that the competition is good, and this would make for better and tougher competition, and tougher competition is always better for everybody concerned. It means everybody has got to drive that much harder.

* * * *

[fol. 1313] DIRECT EXAMINATION

BY MR. MEYNER:

Q Mr. Kinnamon, you went through two mergers?

A Three.

Q Three mergers. Did you find as the result of those mergers that you lowered the rate on your passbook savings?

A Oh, no, no. It gave us the added earnings, not only to sustain it, but to stay in competition, and we were struggling prior to that to meet the payments because we were all here in the country practically savings banks actually acting under the

National Banking Act with the ratio of demand to time deposits.

Q Did you find as a result of the mergers that [fol. 1314] you raised your interest rates to borrowers?

A No. On the contrary, by the greater number of units of dollars, we actually would have more net, and from the competition angle if it was a question of price we could lower our rates and compete a little better for loans.

* * * *

[fol. 1315] CROSS-EXAMINATION

BY MR. WEINBAUM:

* * * *

Q Back when you were a $21 million bank, did you have a full-time commercial and industrial lending officer?

A We were dividing that up pretty much among ourselves, spreading so thin, you see. See, we had a little nucleus of experienced fellows there.

Q Who were sharing–

[fol. 1316] A Who were all qualified.

Q –different responsibilities.

A As we were spread around the area, you see. That is correct.

Q And did this apply to your mortgage lending people as well?

A Practically everything at that time.

Q Was generalized, as opposed to specialized?

A Well, we had duties weighted. See, we had to cover a county practically. We had duties weighted so that somebody was charged with mortgages, among his other lending duties; somebody with commercial loans; and that type of thing, you see.

Q At what state did you designate somebody to handle commercial and industrial lending full time?

A It grows into just evolution as you get there.

Q As you move along–

A As you move along.

Q –the growth of the bank.

A "It is now time for you to supervise this thing," you see. The same way with mortgages.

Q Would it be fair to say, Mr. Kinnamon, that with respect to the role of mergers in your growth, that they really did not have anything to do with your ability to hire or designate special people for various jobs?

[fol. 1317] A I don't get you on that. Excuse me.

Q I will rephrase the question. You indicated that this was an evolutionary process.

A Right.

Q As far as hiring specific individuals or designating specific individuals.

A Designating; not hiring, designating.

Q These were people in your bank.

A Yes.

Q And you reached the point where you found they had to specialize.

A That's right.

Q With respect to the trust operations of your bank, you presently have a trust department?

A Yes.

Q And you are the full-time trust officer?

A I am the person who will devote his full time to it, as required.

Q I see.

A We do not enjoy a big volume of estate trusts in that area. We do quite a corporate trust work.

Q Do you go out and solicit trust accounts?

A Where they are substantial, yes.

Q Can you describe briefly for us the Flemington area; how big a town is it, Flemington itself?

[fol. 1318] A Well, all of Hunterdon County is made up of a lot of small rural towns. It would be just about like Warren County, if you would exclude the concentration in Phillipsburg. Towns like Washington—Do you know Washington?

Q Yes, I do.

* * * *

[fol. 1320] Q How big is your trust department in terms of assets?

A Well, as I say, we have a peculiar situation in our area, and we do mostly trust department. We serve Standard Oil of New Jersey, Eastman Kodak, American Tobacco, Liggett & Myers.

Q With trust services?

A Corporate trusts.

Q And what do these entail?

A That has to do with the transfer of stock which is [fol. 1321] required by the state. We record the issuance and transfer of every stock certificate that is traded on in the New York Stock Exchange in certain of those companies.

[fol. 1322] Q When did you last hire a management trainee or an officer, an experienced officer, for your bank?

A I would say that would be about ten years ago, but–

Q You haven't brought anybody in from the outside since that time?

A Oh, yes, but you said an experienced officer.

Q A man who is a trainee or an experienced officer.

A Oh, in June.

Q And was this one of the chaps you indicated it would cost somewhere between 75 and $8500 to hire?

A That's right.

Q What–

A The two we missed, we couldn't get at the fourteen grand, they wanted to go somewhere else.

Q What is your actual cost of these men when you take into account the tax reduction in hiring such a person?

A It is about net, because we have grown so that our reserve for loans can reduce us to a rather small tax situation, and besides, we have been plowing back money, our earnings are not very large.

Q So you figure that the net cost of hiring one of these men is in fact about $7500?

A An undergraduate youngster, yes.

Q There is no money saved in your tax situation?

A Very slight.

[fol. 1323] Q What is the approximate tax rate of your bank at the present time?

A We stay in the minimum, usually, because our reserve will allow us to do that.

Q In the minimum would be about what?

A There is your specialist–

Q Can you estimate it?

A I think it is 22, isn't it? I think it is 22, but I couldn't be positive.

Q And wouldn't the cost of this man, then, be reduced proportionately by the 22 per cent tax saving which you have otherwise paid?

A Yes, but I haven't gotten into the so-called fringe benefits that are no longer fringe because they have gotten to be so much, such as a pension and the type of cost like that that are all added. We get a promising young man, and right away we will buy his insurance for him; that will put him in the insurance—put him in the pension fund, so that no matter what happens to him from there on in he has got that much insurance, it is term, that he can't miss no matter what happens to him for that much when he becomes an officer and can enter the pension plan five years later.

Q How long has it been since you have paid a cash dividend at your bank?

A About twelve to fourteen years, I just can't tell you [fol. 1324] exactly.

Q How do your shareholders feel about this?

A Well, in order—we just had to sell stock for the first time, just to keep abreast of a proper ratio, and it was a small issue, I think the cash was about $267,000, and it was over-subscribed by about 50 per cent.

Q You have retained these dividends to provide for certain things which you felt your bank needed to stay competitive?

A To better serve our community; in other words, we knew—now, what sense does it make, just from the shareholders' angle, forgetting the service angle, if you pay out dividends, when we estimated that one-third—that the rate of taxation of our stockholders was about 33 per cent, and we have now—we had at that time about 500 shareholders, we now have over 750, I think, so it is not a concentration. If we will pay out $300,000, to make the arithmetic simple, in dividends, and they have taxed 33 per cent, and then we have to sell $300,000 in stock, they would have $200,000 to buy back $300,000 worth of stock, so we just kept the dividends, and have had a very happy reaction from our shareholders. And it has attracted many other shareholders because we try to keep them informed, and they see that we are building this thing, trying to stay abreast of the growth in the community and to serve our [fol. 1325] depositors. That farm that cost some

years ago twelve thousand, we loaned six, those farms are selling for $200,000 now, and it takes a $100,000 mortgage on a single farm out there. And we could never have done it if we hadn't started on this thing, conserving our dividends, our capital funds.

Q On how many occasions have you increased the capital of your bank apart from these merger situations?

A Only by retention of earnings, until just this present year, I think it wound up just ahead of June 30th, this year, it is the first time that our supervisory authorities have required that we increase that, because we always paid very modest cash dividends.

Q And how much additional stock did you issue?

A 267—I just can't tell you the number.

Q Did you sell this to your present shareholders?

A Offered first to them, naturally, and then offered to the public at a higher price; in other words, the shareholders could buy it at 24, and the book value is 16, and we sold the rights to those shareholders who couldn't subscribe—the public bought it at 28.

Q And did you find a ready market for the securities?

A It was over-subscribed by approximately 50 per cent.

Q What is your lending limit?

[fol. 1326] A Just capital and surplus, which I prefer to stay in if I can, is 300,000.

Q Do you ever go beyond your capital and surplus in computing a lending limit?

A We haven't. The comptroller has a regulation for it. I just like to stay there if I don't need it.

Q Your commercial and industrial lending, Mr. Kinnamon, appears to constitute a fairly small per cent of your loan portfolio?

A That's right.

Q Is this because of the essentially rural community which you have been located in?

A That's right. In other words, Lipton Tea, for example, if they needed financing, as you know, it is quite possible that all of the city banks of New York couldn't handle them. We get from a national company of that sort only the type of account that would be a payroll account, and their disbursement requirements in that particular area.

[fol. 1327] Q Mr. Kinnamon, would you derive the vast bulk of your bank's business from Hunterdon County?

A Well, we do a tremendous amount of business over in Bucks County, which is—you see, Doylestown is about the same distance from us south of Easton and Phillipsburg as Easton and Phillipsburg is from the northeast, so we actually swing a circle around about twenty-three miles in every direction.

* * * *

[fol. 1328] Q Your bank appears to have enjoyed fine growth, would you agree with that?

A We think so.

Q And you grew only about eight million dollars by way of merger, is this not correct?

A That is correct. That is right. Four, two and two, in round figures.

Q Mr. Kinnamon, don't you think that it would be possible for two small banks to proceed in much the same manner as you have with respect to retaining dividends and providing for future expenses of their respective institutions?

[fol. 1329] A You see, we started this program in 1946, seeing the handwriting on the wall, and we started out four new branches where they were just needed, because we saw this thing was coming, the reduction of earnings per dollar. These banks have waited too long to try to make it. I don't think they would make it by themselves. I would certainly hate to have to come in there and try that.

Q You don't feel that aggressive management can be found to move these banks along?

A Not if you paid them the entire net earnings of that bank, frankly, and with what they would have to put out in addition for other expenses to make the facilities that that fellow would have a chance to go—and he couldn't do it. That one person couldn't. He wouldn't have a chance to go with it. It just isn't in the wood with what stuff will produce today. For a while we had cheap money and not much expense. Now we have got very dear money and very high expense, so the squeeze is actually a little tighter. We have a little relief with this raise of rates but it is not long enough to justify it, and the boys are already paying too much interest for CD's,

but they can lend it, so the ceiling is beginning to tighten. The room between income and expenses is still tightening.

* * * *

[fol. 1330] REDIRECT EXAMINATION

BY MR. MEYNER:

Q You say that the merger will enable them to get the necessary specialization?

A I think so.

Q Which they otherwise would not have?

A That is right.

Q Would it enable them to branch more?

A I would think so, but you are going to have to get this in industrialization step by step as each person steps up the earnings to enable the next fellow—

Q Would you say that the chief advantage of a merger—one of the chief advantages of a merger would be that you could move out?

A That is right. In other words, it would produce the revenue to allow you to make the additional business expenditures to make more money.

* * * *

[fol. 1333] OSCAR FALK, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Mr. Falk, where do you live?

A 135 Hagerty Avenue, Phillipsburg, New Jersey.

Q What is your business?

A Department store.

Q And food market?

A And food markets.

Q And they are operated under a corporate name?

A Yes.

Q But you and your family are the principal stockholders?

A Right.

Q Where do you operate these stores?

[fol. 1334] A In Phillipsburg, Easton, Pennsylvania, Bethlehem, Pennsylvania, Palmer and Nazareth, Pennsylvania.

Q Are you presently building another store?

A Yes. We are building in Allentown, Pennsylvania.

Q Where is the main office of your operation?

A The main office is on Broad Street, Phillipsburg.

Q Do you conduct deliveries?

A Yes, sir.

Q And where do you warehouse your material?

A The warehouse is on Broad Street.

Q In Phillipsburg?

A Yes.

Q Would you tell us what your total assets would be on a financial statement, not your net worth, but your total assets.

A Three and a half million dollars.

Q You have a department store right outside of Phillipsburg?

A Yes, Lopatcong Township.

Q What is the volume of that business?

A Total business?

Q Yes.

A Between twenty-three and twenty-five million.

Q How about the Forks Township store?

A Volume?

[fol. 1335] Q Yes.

A Do I have to state the volume in each store?

Q Roughly.

A About six million.

THE COURT: This I assume is annual?

THE WITNESS: Yes.

Q The purpose for asking that people be excluded was it is a rather confidential sort of thing.

Palmer Township?

A Six million.

Q Your Nazareth operation?

A Two and a half to three million.

Q Bangor?

A Bangor, five hundred thousand.

Q Bethlehem?

A About two hundred and fifty thousand.

Q What is your estimated business in the Allentown store?

A Ten million.

Q What would you consider to be the greatest area from which you draw customers?

A Between 25 and 35 miles.

Q Do you know some of your customers?

A Yes. They come from Allentown, Stroudsburg, Somerville, Flemington and all people coming from there. I [fol. 1336] meet them.

Q In your Phillipsburg store, where would you say the people are from?

A Allentown, Stroudsburg, Somerville, Flemington.

Q What is the nature of your competition?

A Hess Brothers, Two Guys.

Q Where are the Two Guys from?

A Two Guys are in Allentown.

Q What about Sears?

A The same thing.

Q Are you presently connected with a bank?

A Yes.

Q What bank?

A Phillipsburg Trust N.A.

Q That means National Association?

A Yes.

Q What is your position there?

A Vice president.

Q And a director?

A And a director.

Q Are you a customer of Phillipsburg National Bank?

A Yes.

Q How long have you been a customer?

A Twenty-five years.

[fol. 1337] Q How do you feel about the merger?

A I am very strongly for the merger because I think the merger will make a larger amount of money available to me.

Q What else about the merger would be helpful?

A Finances, mortgages, et cetera, equipment financing.

[fol. 1338] Q Do you have a pension plan?

A Yes, I do have.

Q Are you interested in the bank taking care of it?

A If the bank would have a trust department, I would be very much interested.

Q What are the sources from which you can borrow money now and what are generally the rates that you have to pay?

A Well, we borrow from the local banks. That is the Phillipsburg National Bank, I would say is No. 1 in my operation. Because I can't borrow any more from the Phillipsburg Trust. An officer is not allowed to borrow. I do borrow from the Second National Bank.

Q If you buy equipment–

A Well, we have to go mostly to finance companies.

Q What rate do you pay on equipment?

A About twelve percent–twelve, thirteen.

Q Do you have long-term financing?

A Yes.

Q And with whom do you have the long-term financing?

A New York State Teachers Retirement Fund.

Q What rate of interest are you paying on that?

A Seven.

Q Seven?

A Yes.

[fol. 1339] Q Have you had a greater growth in New Jersey than in Pennsylvania?

A In our community, right now, very much so.

Q Why?

A Small industry coming in, and people come shopping even to Phillipsburg a lot more than before on account of the State tax. We have only a three percent State tax where Pennsylvania has a six percent tax.

Q You think this brings more people in?

A It brings a lot more people.

Q Do you have any check-cashing service?

A Yes.

Q Will you describe it?

A Well, I know that we cash a lot of checks. It was remarked to us that we cash more checks than some of the banks.

Q Which ones?

A I know Phillipsburg Trust, Second National. Any of them.

Q Do you cash these in exchange for purchases?

A For purchases, or they need cash. They might shop, cash fifty dollars or twenty-five dollars. Of course, we cash all pay

checks. We are open so many hours that they come to us more than they go to the bank.

Q In your Warren store—this is Pohotcong Township—

[fol. 1340] A Yes.

Q What other services do you offer in the way of—

A We have a Post Office substation. We issue money orders—I mean we make out money orders. We have the fishing license, too.

Q Do you have any American Express checks?

A At one of the other stores we have the American Express. That's in Palmer Township.

Q And your delivery—where do you make deliveries?

A We deliver to Stroudsburg, Allentown, Flemington, Somerville—on white goods, appliances.

MR. MEYNER: Cross-examination.

CROSS-EXAMINATION

BY MR. WEINBAUM:

* * * *

[fol. 1341] Q Mr. Falk, what type of borrowing do you do from the Phillipsburg National Bank?

A They mostly give me the limit, what they can give me. Right now it is about $100,000 we owe.

Q And do you borrow this $100,000 regularly through the—

A Yes.

Q What is this money used for?

A Sometimes for inventory, when the season comes. Well, we need money for inventory; if there is a good buy, we borrow [fol. 1342] money, go down—

Q Do you borrow from the Second National, as well?

A Second National mostly we use for mortgages. If we buy properties, we use them for mortgages.

Q And how many mortgages do you have with the Second National at the present time, on your business properties?

A I would say maybe four, or five, six. I don't know. Maybe some of it is paid off. I wouldn't know. I wouldn't have the records with me.

Q And you don't use the Second National for any other working capital needs?

A No, Phillipsburg National. Second National we use for mortgages.

Q Have you ever borrowed money from the Phillipsburg National, or the Second National, in excess of their lending limit through participation?

A No.

Q Has the bank ever suggested this to you as a means of providing you with additional capital?

A Phillipsburg National suggested maybe we go to a corresponding bank, because I needed more money. But I didn't care for that—to go to that corresponding bank. Usually they check you out, give you a hard time. Most of the time they turn you down.

[fol. 1343] Q Have you actually had instances where this has happened to you?

A Yes. Not in local banks. I had it in an Allentown bank.

Q But a Phillipsburg bank has never tried to arrange a participation which failed?

A No, they suggested it, but I didn't take it up.

Q Where else do you borrow from commercial banks in addition to the banks in Phillipsburg?

A We have several times borrowed from the First National Bank in Allentown. We had a mortgage with the Union Bank in Bethlehem. We did have a mortgage with the First National Bank in Allentown, but this we combined and gave it to the New York State Teachers Retirement Fund, because we needed a longer term loan. So they took it.

Q The mortgage in Bethlehem, was that in connection with your property in Bethlehem?

A No, it was with the Palmer store.

Q The Palmer store?

A The store in Palmer Township.

Q Have you gone to any other big city banks in an endeavor to obtain credit?

A No.

Q In your opinion, would you be able to go to the large city banks to obtain credit?

[fol. 1344] A I don't think so.

Q Why do you say that?

A They feel we are in Phillipsburg, in Easton, and we should go to the banks there, most likely.

Q The large city banks, you don't feel would be interested in—

A No, except maybe if we were triple A—something like that—your rating is very high, they will be interested.

Q You are a large business, though, are you not?

A Yes.

Q And wouldn't you agree that there is a likelihood that if you went to a large city bank you would be able to obtain credit from them?

A Well, I tried. I was turned down.

Q Where were you turned down?

A In Philadelphia.

Q In Philadelphia. What bank?

A I don't remember.

Q You don't remember?

A No.

Q How long ago?

A I think it was—one bank I know was the Philadelphia National Bank.

Q How long ago was that?

A About five, six years.

[fol. 1345] Q That was before your big store was opened?

A Right.

Q Do you consider the banks in Easton as a possible source of credit for you?

A That is possible.

Q Have you ever approached Easton National with regard to obtaining credit?

A No.

[fol. 1346] Q You are aware of the fact that they could lend in the area of $500,000 to a borrower?

A Yes, I know.

Q There is another bank in Easton which also has a lending limit approximately what the combined banks in Phillipsburg, the defendants' banks would have, are you aware of that?

A Yes.

Q Is there any reason why you don't like to go to the Easton banks for credit?

A I live in Phillipsburg. There are three banks in Phillipsburg. I know the directors. I know the president of the bank and I feel when I go to them they know who I am and how I started and they will give me more consideration than I

would get if I went to the Easton bank where they don't know me.

Q When you started out, Mr. Falk, was it more difficult for you to get credit than it is now?

A I would say it is easier for me now. My operation is much larger. When I started out I didn't need any credit. My operation was small. I needed very little.

Q Who is presently handling your pension fund as the trustee or trustees?

A Some New York outfit.

Q Do you know the name of it?

[fol. 1347] A No.

Q Is it a bank?

A No, it is an insurance company.

Q An insurance company?

A Yes.

Q And can you say positively at this time that if this bank—these banks were to merge that you would certainly turn this pension plan over to it, if they had a trust officer?

A Yes.

Q You feel that this bank would be able to handle your pension fund in a manner equal to or better than it is being handled now?

A Better, very much so.

Q You are unsatisfied with the way it has been handled at the present time?

A I feel if it would be handled locally by a local bank it would be more beneficial to my operation.

Q Why is that?

A Because they are local and you could communicate much more often and they will be available, where in New York we don't know what they are doing there.

Q Do they report to you frequently?

A Once in a while.

Q Are you a stockholder of either of the defendant [fol. 1348] banks?

A What?

Q Are you a stockholder of either of the defendant banks?

A No.

* * * *

[fol. 1349] NEVINS DENNIS BAXTER, sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?

A In Philadelphia, Pennsylvania.

Q And will you give us your educational background?

A I have a Bachelor's degree from Columbia University summa cum laude in economics. I have a Master's and Doctor's degree in economics from Princeton University.

Q What positions have you held?

A I am assistant professor of finance at the Wharton School of the University of Pennsylvania and I am an associate director in charge of economic research services at Mathematica in Princeton, which is a research and consulting firm.

Q Have you written some material on banking?

A Yes. I am the author of a book on the commercial paper market, and have written several articles on banking [fol. 1350] and finance in professional journals.

MR. MEYNER: Do you want to inquire?

MR. WEINBAUM: No.

Q Have you had an opportunity to go over material with respect to the two banks proposed to be merged?

A Yes I have.

Q Have you read the testimony given in this court with reference to the case?

A I have read a considerable number of the witnesses.

Q Which ones?

A I have a list here. I have read Mr. Leupo, Mr. Varga. I have heard Professor Edwards. I have read Mr. Greenley, Mr. Denton, and I can give some more if I can dig that one out.

Q Have you examined the exhibits of the plaintiffs?

A Yes I have.

Q Have you examined the exhibits of the defendants?

A Yes I have.

Q Will you generally tell us something about these banks as a result of your investigation and your examination of the material you have mentioned.

A Well, they are fairly small commerical banks which are located in Phillipsburg, and do a business in which they

compete with a large number of financial institutions. They [fol. 1351] are largely concerned with the borrowing or receiving of and lending money, and the activities of these banks really make them much more, in my opinion, like savings institutions than like so many of the larger commercial banks.

I would like to refer to the defendants' Exhibit No. 4 to indicate the ratios of these banks, the factors that these banks concentrate on are quite different from all banks in the United States. For example, for Phillipsburg National Bank under 10 per cent of the assets was in commercial and industrial loans, and under 8 per cent for the Second National Bank, as compared with 19.6 per cent for all banks in the nation.

On the other hand, they emphasize real estate loans, mortgages, much more heavily than do average banks in the nation. 33 per cent for Phillipsburg National Bank, 44 per cent for Second National Bank and only 13 per cent in the nation, and on the deposit side the emphasis is much more heavily on time and saving deposits than it is on demand deposits. Both banks are up at 56 per cent as compared with only 41 per cent for banks in the nation as a whole. That is Table D-4 that I was referring to.

Q With whom do these banks compete and on what basis?

A They compete—

Q Let's take where they get their money.

[fol. 1352] A They compete for the savings of the community with a large number of institutions, and I would like to refer to Table D-1 which shows at the end of 1967 the financial assets held by households in the United States, and it is clear that commercial banks as a whole, even if you include currency—and you have to because of the way the statistics are gathered—hold only 15 per cent of the financial assets, and this compares—savings are almost as big. 45 per cent of the savings of households are going into the stock market or in common stock, so you see commercial banks are only one of the investment media.

Q So how about the loan factor. You have told us where you think the money is that people put in the banks. Now how about the loan competition?

A Well here for different types of loans the type of competition faced by the banks is going to vary. In mortgages, for example—and here I am referring to Exhibit D-2, commercial banks have under 15 per cent of the market. Savings and loan associations are their biggest competitors on a

nationwide basis, 44 per cent, just under that. Mutual savings banks 14 per cent. Life insurance companies 13 per cent, and this is the one to four-family mortgages. For commercial mortgages, life insurance companies would be even bigger, so this is the type of competition faced in the mortgage market. [fol. 1353] When we turn to consumer credit, then the finance companies become very important. On Exhibit D-3 we see that finance companies have just under 25 per cent of this market. Commercial banks are just over 40 per cent and credit unions are very important and very rapidly growing and have almost 10 per cent of this market. Individuals and others, your department stores, credit card operations and the like, are also a very significant factor in the consumer credit market.

Q Will you give us a fuller explanation of the role of department stores or credit card people?

A Well, many people who are shopping in a given department store will have a charge account there and they pay by check at the end of the month. They may have a charge account that can be used in several stores, so it is more convenient. They can shop in these several stores. They don't have to carry as much cash with them, and in terms of credit card plans which have been growing very, very rapidly, there is a way that people can economize on their demand deposit balances, their average balances can be lower. They can even use these credit cards to take out loans.

Q Of course, if you don't pay after a month it becomes a loan, doesn't it, in a sense?

A Right. For example, the American Express has a fly [fol. 1354] now and pay over a three-month or six-month or twelve-month period. The extended payment plan on American Express credit cards, and they charge interest just as a bank loan would when you are borrowing, and you are borrowing from American Express in that way.

Q That is true with department stores?

A That is correct.

Q On installment sales?

A That is right. It is known that it is an important source of income for many types of operations, department store operations and chain stores.

Q Did you have an opportunity to read Professor Kripke's testimony?

A Yes I have.

Q Do you agree about the competitive factors he described there?

A I agree that finance companies are very active competitors in so much of the operations of commercial banking.

Q Now you have given us figures on a national basis. Would they be meaningful to the standard metropolitan district known as the Allentown-Bethlehem-Easton area?

A Yes, I think so.

In using these national figures, of course it is important to get an idea of whether Allentown-Bethlehem- [fol. 1355] Easton a representative area, and in analyzing this question I prepared Exhibit 6 which shows Allentown-Bethlehem-Easton, and there are bank deposits in this area which are in about the same proportion as the population is to the total population. That in terms of factors such as proportion of population in urban area the age distribution of the population, the mediant income and so on, that the figures for the Allentown-Bethlehem area are quite comparable to the nation as a whole, and one might surmise that the savings flow, that the financial assets held by the institutions would also be comparable.

Now the growth of commercial banking in Allentown-Bethlehem-Easton is quite comparable to that in the nation as a whole. For example, Exhibit D-7 takes the standard metropolitan statistical areas of about the same size, the six larger and the six smaller ones—I think it is the ten larger and the ten smaller ones than Allentown-Bethlehem-Easton and shows that the total group grew 106 per cent, and from 1950 to '64 Allentown-Easton 104 per cent, so they are right in the same ballpark in terms of growth, and we have also gathered statistics to indicate that there is substantial stock market ownership. Unfortunately, these data are available only by states as compiled by the New York Stock Exchange, but I believe that the information we have for New Jersey and Pennsylvania [fol. 1356] would indicate that it is quite representative, and these data appear in Exhibit D-28.

D-29 shows that there are registered representatives in the area and the officers of the stock market firms, and again indicates the same picture. D-31 gives an indication of the credit union activity in New Jersey and Pennsylvania, and once again would lead us to think that this area of the country is representative of the nation as a whole in terms of these financial transactions.

Q Now on the basis of what you have described that you have done and what investigation you have made and of the analysis you have given us, what would you say is the trading area for these banks, the two defendant banks?

A The definition of a trading area—a trading area is always somewhat fuzzy in terms of its boundary because there is always going to be some activity taking place outside the area which is ultimately chosen as a trading area, and even within the area activity is going to be more intense in certain places than in other places. However, in considering very carefully the notion of trading area for these banks I believe that I can support the definition of trading area which is put forth in the answer, namely the Allentown-Bethlehem-Easton standard metropolitan statistical area plus a portion of Hunterdon County in New Jersey and a portion of Bucks County in Pennsylvania.

[fol. 1357] Q Well, will you tell us about the standard Metropolitan statistical area, and why you support that as the crux or the main part of this area?

A Well, in looking at where the trading area should be defined, the standard Metropolitan statistical area, which is an economically integrated and socially integrated area—and I would like to go into a little bit more detail on that—this was the first thing that obviously came to mind should be included. Since Phillipsburg is a part of an SMSA, being located in Warren County, and since this area is chosen by the Federal Government, in consultation with several agencies, based on criteria, it is supposed to indicate an integrated social and economic area.

I think it might be useful if I could read for a minute from a publication of the United States Department of Commerce, Bureau of the Census, which describes some of the criteria used for selecting the standard Metropolitan statistical area. And I am reading from Page IX of United States Census of Population for 1960. This is the New Jersey volume put out by the United States Department of Commerce.

"It has long been recognized that for many types of analysis it is necessary to consider as a unit the entire population in and around a city, the activities of which form an integrated economic and social system. The definitions [fol. 1358] and titles of standard Metropolitan statistical areas are established by the Bureau of the Budget with the advice of the Federal Committee on Standard Metropolitan Statistical Areas. The

Committee is composed of representatives of major statistical agencies of the Federal Government."

I am not reading now. They take into account population criteria, criteria of Metropolitan character, and criteria of integration. And I would like to read what they say about the criteria of integration.

"The criteria of integration relates primarily to the extent of economic and social communication between the outlying Counties and central County. A County is regarded as integrated with the County or Counties containing the central cities of the area if either of the following criteria is met:

"Fifteen percent of the workers living in the County work in the County, or Counties containing central cities of the area; or twenty-five percent of those working in the County live in the County or Counties containing central cities of the area.

"Only where data for criteria 6(a) and 6(b)"—those are the two I just mentioned—"are not conclusive, or other related types of activity used as necessary."

"This information includes such items as average telephone calls per subscriber per month from the County or [fol. 1359] Counties containing central cities of the area; percent of the population in the County located in the central city telephone exchange area; newspaper circulation reports prepared by the Audit Bureau of Circulation; analysis of charge accounts in retail stores of central cities to determine the extent of their use by residents of the contiguous County; delivery service practices of retail stores in central cities; official traffic counts; the extent of public transportation facilities in operation between central cities and communities in the contiguous County; and the extent to which local planning groups and other civic organizations operate jointly."

Now, given these criteria of economic and social integration, I believe that Phillipsburg, being in Warren County, and being in the Allentown-Bethlehem-Easton area, immediately this suggests to me that this is one economically and socially integrated trading area.

THE COURT: Doctor, you had mentioned a portion of Hunterdon, and then you included another area. I think you gave me the Allentown-Bethlehem-Easton area, and a portion of Hunterdon. What was the other one?

THE WITNESS: A portion of Bucks County in Pennsylvania.

THE COURT: All right.

Q Will you tell us why you included a portion of [fol. 1360] Bucks County?

A Yes, sir. The Riegelsville branch of the Girard Trust Company has been actively soliciting business in this area. And it is clear to me that they are in this market.

We have, for example, an exhibit—D-11—which shows the very substantial amount of business which this Riegelsville branch of the Girard Trust Company has been able to attract in the area. For example, if we look at total savings and demand accounts and savings—what they call savings bonds, bank savings bonds—within the narrow Phillipsburg-Easton and environs trading area, which is defined by the plaintiff as their trading area, the Girard branch at Riegelsville gets 31.62 percent of their business. So they are deriving almost a third of their business from Phillipsburg-Easton and environs, and they are located in Bucks County.

Q As defined by the plaintiff?

A Right. And within the trading area which we define—which the defendants define—including the standard Metropolitan statistical area, the portion of Hunterdon and Bucks County, they do just over ninety-two percent of their demand savings account and savings bond business.

We know that the Riegelsville branch has been actively soliciting business because they have sent out advertisements to professional people living in Phillipsburg and Easton; they [fol. 1361] have advertised widely on the radio and in newspapers; and have been going after this, as shown by their success in getting this business.

Q Were there any other factors that caused you to support the notion that the trading area you described is the trading area of the defendants?

A Well, there are cities and townships located within a very short drive of Phillipsburg in all of these areas. For example, if we look at Table D-33—this just gives the distance of certain cities from Phillipsburg—and we see that, for example, Bloomsbury, which is in Hunterdon County, is only seven miles from Phillipsburg. So one would think that this is certainly, in my judgment, close enough to constitute real competition.

Now, we also used primary evidence to support the notion of the standard Metropolitan statistical area, plus these additional portions of Bucks and Hunterdon Counties. Starting with the fact that the government believed this to be an economic and socially integrated area, and using some of the guidelines

suggested in the report that I read, their criteria, we tried to gather some statistics on where people live and work, on what the newspaper circulation is, and how this constitutes an integrated market for the purpose of newspaper circulation; investigated the delivery practices of the stores in [fol. 1362] the area, and charge accounts; looked at bridge crossings to see whether or not there was a substantial flow of traffic going back and forth between the New Jersey and Pennsylvania sides. And all of this supports the conclusion that I have reached that this is an integrated area.

For example—and I just would like to refer briefly to some of the exhibits that present this information—the employees of the Riegel Paper Company, substantial numbers live and work in both New Jersey and Pennsylvania. That's D-36.

D-38 shows the Baker Chemical employees working and living on both sides of the river.

The Ingersoll-Rand figures, which I take it are not in an exhibit, but which I have seen, these indicate about half of the people in the Ingersoll-Rand plant are actually living on the Pennsylvania side.

Q That was in Mr. Varga's testimony?

A That is correct. Now, we know, also, that the Allentown Call Chronicle newspaper and the Easton Express advertise as together covering a national market. If we look at D-13, for example, the two newspapers together indicate that you sell in Pennsylvania's third market—third largest market in the State, best, with the Allentown paper—the Allentown Call Chronicle and the Easton Express, covering eighty-three percent of the families in a leading national market, as they [fol. 1363] put it. And for national newspaper advertising, for marketing purposes, this is looked at as a fully integrated marketing area, Metropolitan area. And data are gathered for the Metropolitan area on retail sales in different types of establishments, and the like, which is used for national marketing purposes.

In terms of delivery practices, Hess Brothers, for example, delivers, I believe, three times a week to Phillipsburg—for furniture and other goods. This is indicated in Exhibits D-34 and D-35.

Orr's is a department store in the area which has stores in Warren County, in the Phillipsburg shopping center, in Easton and in Bethlehem. And data on charge customers at Orr's indicates that these people are shopping in one store at one time and another store at the other time. They are using them

interchangeably. And therefore they consider them in one market. The same people may jump around to different stores, depending on where they happen to be. This is D-37.

And Exhibit D-32 indicates the very heavy traffic on the bridges, both the downtown bridge and the toll bridge, connecting Phillipsburg and Easton. These bridges have heavier traffic virtually than any other, except the Trenton-Morrisville Bridge, which is about the same.

In terms of heavy truck traffic and bus traffic, the [fol. 1364] Easton-Phillipsburg toll bridge has far more crossings per day, according to our information, than any other. They have about 6,000 crossings. The next highest is the Trenton Bridge, which is under 2,000.

In sum, I think that this information all supports the conclusion of an integrated trading area.

Q Would you attach significance to the trading set forth in plaintiff's exhibits, outside of what plaintiff contends are the trading areas?

A Well, the significance I attach to these figures is that it appears that the two banks are doing a substantial portion of business outside of the trading area claimed by the plaintiff. In installment loans, for example, which is an exhibit prepared by the plaintiff, but which was submitted by the defendants as D-39, Phillipsburg National Bank is doing thirty-two percent by dollar amount of its business outside of the Phillipsburg-Easton area, defined by the plaintiff. For the Second National this is smaller, but it is still 13.8 percent.

For single-payment loans, Phillipsburg National is doing over forty percent of its business, by dollar amount. This is in D-40. The Second National, over thirty percent.

In demand deposits—and this is Exhibit G-19—Phillipsburg National has over sixteen percent of its business; over fifteen percent for Second National.

[fol. 1365] In time deposits, Exhibit G-21, ten percent for Phillipsburg National and for Second National.

For real estate loans, G-24, over seventeen percent for both banks.

To me these figures are significant activity. And more important, I think they indicate the potential for even greater activity outside these areas. I believe that a merged institution, which would be a larger institution, and would be able to get specialists—and we have heard a lot about specialists in these lines of activity—the purpose of the specialists would be to go

out and solicit business a little bit further away from the home office. And I believe that these figures could be increased substantially if there were aggressive solicitation. I believe that they show that local customers—that a significant portion of customers do have the alternative of going outside their immediate local community. And there is no reason to believe that if they weren't well satisfied by the performance of the local bank, that even more people could go out. We have seen that they shop outside, that they travel outside. They can bank by mail. They are moving around rapidly in this geographic area. If the banking in the immediate locality weren't as good as it were elsewhere, these figures are high enough to indicate to me that more people could go out and bank.

[fol. 1366] And after all, the potential, in my mind as an economist, is every bit as significant here as the actual figures taking place today.

Q Based upon the study, and what you have said, have you arrived at any conclusion with respect to the anti-competitive effect of the merger?

A I believe that any anti-competitive effect of this merger would be absolutely minimal. I base that on several considerations. Currently in the Allentown-Bethlehem-Easton area the level of concentration, as measured by concentration ratios, the proportion of assets or of deposits held by the largest firms—of several firms in the market—is very, very low. It is just about the lowest standard of concentration in any standard Metropolitan statistical area over 300,000 population in which branch banking is permitted. And on this I would like to refer—

Q That is out of about how many?

A Fifty or sixty. I can get the exact number.

Q But it is shown in D-8, isn't it?

A Right. I was going to refer to Exhibit D-8, which presents population figures and concentration ratios for the largest banks in the SMSA, for the three largest combined and for the five largest combined. In Allentown-Bethlehem-Easton, the three largest, for example, and the other ratios bear out the same point, so I will just deal [fol. 1367] with this one, the three largest have 39.1 percent of this market. This compares with 62.9 percent for all SMSA's in this group.

And if we take a few others which are about the same size as ABE was in 1960—namely, Allentown-Bethlehem-Easton—had 492,000 people. So if we take a couple of others of this size—Grand Rapids, Michigan, for example, the three largest had

seventy-seven percent of the banking deposits. And this was much higher in Hartford, Connecticut; they had 91.2 percent.

And we can go down this list. Nashville, 93.2 percent; and so on.

So right now the level of concentration in this Metropolitan area is quite low.

Secondly, the Phillipsburg National Bank and the Second National Bank are fairly small factors, in fact very small factors, in this standard Metropolitan statistical area market.

If we look at Exhibit D-12, we see that the assets of Phillipsburg National Bank are only 1.9 percent of the total assets in the trading area. They rank No. 12 of 41.

The Second National Bank has only 1.35 percent of the assets in this trading area, ranking 19th.

And if we put the two banks together, we will have 3.23 percent of the assets, ranking 7th of 40. The concentration [fol. 1368] ratio for the three, or five, or six largest banks won't be affected by this merger. And the total share of the market will be only a little more than three percent.

So I do conclude that these are small factors in the market, and that the merger would not affect the concentration of the largest firms in this market.

I also believe that there are some aspects of the proposed merger which are pro-competitive. If we actively go out and solicit trust services, as the intention has been expressed, the new competition and activity in this area of business would provide another significant alternative to the people living in the Phillipsburg and Easton area, and in the standard Metropolitan statistical area.

Now, there are several large banks in the area who are providing it and we would have another force in that market.

If a specialist is hired in commercial and industrial loans, and with the larger lending limits that would result from such merger—it would be over $200,000 to start, and if new capital is raised, it would be enhanced—there would be another major bank. There are already several large banks in the area. Exhibit D-9 indicates this fact. And there would be another bank which would be able to extend business credit to these firms who need lines of credit and loans, say, between $100,000 and $300,000. [fol. 1369] The competition in this market in a very real sense could be enhanced by the merger.

Another reason why I don't think that this merger would have any meaningful or even measurable anti-competitive effect would be that I believe that entry into banking is relatively easy, in terms of the capital requirements of banks compared to many other industries where there is a heavy, fixed investment in plant and equipment, capital requirements of banks are relatively small. I have studied figures on this, and it depends on the population of the area, but a few hundred thousand dollars would suffice to establish a new commercial bank in this area. Entry is also possible by new firms in savings and loan associations, and in mutual savings banks. Over the past years the regulatory environment for entry in the nation as a whole in commercial banking has been favorable. There have been many new bank charters. Table D-10, for example, indicates that in 1966 there were 124 new charters; over 200 in 1965; and so on.

The number of banks in operation has gone up since 1960 by some 300 banks, bringing in the new entrants and netting out the banks which merged.

So that I believe that entry is relatively easy. I believe that the new entrants into the market have been able to survive. And this certainly is a factor that I would consider as being important in assessing the competitive [fol. 1370] impact.

Q It is also possible for some of the other financial institutions to expand their area of activity, is it not?

A That is correct. It is possible for mutual savings banks and savings and loan associations to grow in this area, for life insurance companies and the like.

Q Did you encounter recently the Federal Reserve Board ruling as to location of loan offices?

A That's right. And they extended the ability of commercial banks to accept loans in areas other than in which they maintain banking offices.

Q Do you see any possibility of interest rates on passbooks being lowered by reason of this merger?

A No, I have absolutely no reason to believe that this is even a possibility. I know of no cases in the past that this has happened. I think that the competition in this area is so intense that funds would just begin to flow out of the bank immediately. They couldn't exercise any degree of market power here. So if this is the market rate of interest they are paying, and obviously the four percent is, I don't see any conceivable possibility how interest rates could be lowered.

Q What would be the effect on the rate of interest paid on loans?

A I don't think that the merger would have any effect [fol. 1371] on the rate of interest charged—you are referring to the rate charged on loans given by the bank?

Q Yes.

A I don't see that it would have any effect. If it did have any effect, it would be to reduce the interest rate charged, I believe. And this is true because in my studies I recognized that there will be economies of scale; very, very likely to be significant cost savings. And one of the ways that the banks may be able to pass on these cost savings would be through somewhat lower interest rates, by going out and competing more aggressively. They have larger resources, if they are merged, and an institution with larger resources might be even more anxious to make loans. They are going to have aggressive lending officers, if the plan to bring in specialists is followed through. And this may lead them to go out and reduce the rates that they—

Q Do you sense any dominance of the market as a result of the merger?

A Absolutely none whatsoever.

Q What would you say are the advantages of serving the convenience and needs of this section of the country?

A Well, I believe that the advantages to such a merger would stem from the economies of scale which would be realized. And there have been several studies of economies of scale in banking and, to my knowledge, they all indicate that there will [fol. 1372] be some savings when commercial banks are small. Under the fifty million dollar asset size there are significant economies of scale.

Let me define what I mean by economies of scale, and then indicate what it would mean to these banks, or what it might mean for these banks.

In looking at the question of economies of scale we are interested in the notion of operational efficiency. How much does it cost the bank, or the firm, or any institution under examination, to produce a unit of output? Now, there are different measures of banking output. One is loans, another is deposits. Most commonly used is assets. This is a measure of what the bank gives the community. A bank which is servicing,

which is producing assets, we are interested in what the unit operating costs would be. [fol. 1373] Now studies which have been performed indicate that as a bank grows, say certainly under the $50 million range and most studies are also pretty clear under the $200 million range, that savings costs of operation per unit of output are reduced. One calculation, which I performed for these banks is indicated, that there would be about a $50,000 a year savings in terms of operating costs for producing assets of the size of these banks. This was based upon a previous study which had been done and had estimated these costs over a large sample of banks in the United States.

Another estimate that I did, based on still another statistical study, looked only at certain functions of the banks. It looked at demand and time deposits and at three types of loans. I believe they were real estate, consumer and commercial and industrial loans, and this study needed figures on the current costs of operations of the bank, which we were able to obtain only for the Phillipsburg National, and insofar as this is the bigger bank and has maybe a little lower cost than the Second National, these figures would be an underestimate, and for these five functions, these three types of loans and two types of deposits, I come up with a figure of just over $22,000 a year, so it is a lower figure than the other study gives, but I believe the second one is an underestimate, but I don't think the precise figure is really the most important [fol. 1374] point here.

I think it is clear that there would be a savings which is substantial to these banks relative to the net profit that they have been realizing, and I believe that from these economies of scale that could be realized there would stem a number of areas in which the banks could go out and attempt to serve the community better, and in so doing, of course, grow more rapidly.

Now one of these areas that these funds could be channeled into is in acquiring some of the specialized personnel that would be useful, such as a trust officer and a mortgage officer and the like, and in having specialized departments and activities. Another area that requires substantial investment is new branches.

Branching is allowed throughout Warren County except where there is an office of another competing institution,

except in that municipality, and there are, I am sure, many areas in Warren County that the merged bank would like to go out into and thereby enhance competition, but a branch requires investment. A branch costs, at least initially, and certainly a larger bank would be able to make this investment using the savings. The larger bank also might be in a more favorable position to go out and get new capital at more favorable terms. I believe in sum from these economies of scale there stems a number of areas that [fol. 1375] funds could be profitably invested, that the large bank would be big enough to warrant, to merit investment in some of these specialized activities, and I think that the community can only benefit from them.

Q What would you say about modern banking and the possibility of these two banks meeting that requirement?

A It is difficult for small banks in an era which requires substantial investment in computers, in specialized personnel, in technology, it is difficult for the small institutions to have the resources to specialize, and I think it would be very difficult as we get more specialized and more automated for these banks individually to keep up as efficiently as a larger institution could.

Q Are you familiar with people, young people going into banking and the salaries and needs—and the availability of personnel?

A I know from my position at the Wharton School. I am quite familiar with the markets for new graduates, both on the undergraduate level and especially on the master of business administration level. I know that this year a good man in banking and finance might expect to get 11 or $12,000 a year to start with substantial fringe benefits. I know that there appears to be, from talking to students, a reluctance very often to go with a small firm because they believe that even if the salary were competitive the [fol. 1376] opportunities might not be as competitive. When they go with a larger institution they have a specialized training program. They are able to, if you will, build up their own human capital faster, so the smaller the institution the harder it is to give a guy who has had an education and a foundation, to give him enough of an opportunity to make it really attractive for him.

MR. MEYNER: Cross-examine.

CROSS-EXAMINATION

BY MR. WEINBAUM:

Q Dr. Baxter, you did testify in the Provident-Penn case?
A Yes I did.
Q As an expert witness for the defendant?
A For the intervenor, the Comptroller of the Currency.
Q And in that case you took the position that the Philadelphia standard metropolitan statistical area which includes Camden, New Jersey, was the appropriate geographic market?
A Yes I did.
MR. MEYNER: At least he is consistent.
Q How do you define a banking market as an economist, Professor?
A I look at a banking market just as I look at any other market, as an integrated area where there are buyers and [fol. 1377] sellers and where the operation of the buyers and sellers determine the quantity of sales and the price in that market, and the people in this market are all interacting to effect the price and people outside the market are not significant factors—or products outside the market. I believe you can define a market in a reasonable sense only in terms of a specific product that is sold.
Q You have examined the record in this case?
A Yes.
Q You have read certain testimony?
A Yes.
Q Have you read all the testimony?
A I have not read all of it.
Q What relevance in defining a banking market, Professor, do you attach to the fact that a person would drive from Hackettstown to Hess' in Allentown to buy a suit of clothes?
A The market for clothing is of course not identical to the market for banking services, but the fact that it is convenient to get in your car at Hackettstown and drive out to Allentown to buy a suit of clothes would indicate to me that it is also convenient or possibly convenient to go out to Allentown to

make a loan. It is not a major consideration to go in and travel and shop, and the residents in the Hackettstown community if they felt rates were lower or [fol. 1378] opportunities were better or terms were better in one sense or another if they can go to Allentown to buy a suit they can go to Allentown to make a loan. I know suits are available in Hackettstown just as a bank is.

Q Are you aware of the fact that there is an indication in the record that Hess Brothers serves about a six-state area?

A Yes. Hess Brothers is a large department store in Allentown.

Q And is it your view that from wherever Hess Brothers derives it clothing business or other business that this would necessarily be a banking market?

A No, no it is not, but if people can travel for a suit of clothes they could also travel for banking services. This is only one criteria of where people are moving to show that this is an integrated area. It is not in itself conclusive.

Q You are aware of the fact that there are large merchandising stores that do draw people from vast distances, isn't that a fact?

A Certainly, and there are large banks that draw people from vast distances.

Q What significance do you attach to the fact that a contractor might do business within a radius of 40 miles of Phillipsburg as this fact might be applied to the banking [fol. 1379] business?

A Well, such a contractor does business in a 40-mile radius. He would be known to people in a 40-mile radius. I presume he would be known or could make himself known to banks in this radius, and I presume that his banking business—that his business at a bank would be quite welcome within this 40-mile radius.

Q Do you know where this contractor, Mr. Hajdu, does virtually all his banking business?

A I don't know the facts on where he does his business. I am aware that he is a director of the Phillipsburg National Bank and would presume that that is his lead bank.

Q And he does do business locally?

A Well, sir, I believe that all this indicates to me is that this bank has been successful in meeting the contractors' banking

needs. What is relevant in my mind is not where someone does his business, but where he is able to do his business, because when we look at the possible anti-competitive effects of any merger we are asking what happens if the merged institution exercises its market power and performs so as to charge higher interest rates or to grant less liberal terms. What are the possible adverse effects of the merger, and if these are the possible adverse effects all I am arguing is that the contractor will say "Well, I used to be satisfied at the Phillipsburg National, [fol. 1380] but now they are merged and they are not satisfying me any more, so I will go over to Allentown." He can do that. That is the question I ask myself. Can he bank elsewhere if he is not served well locally?

THE COURT: Doctor, would this be basically a matter of convenient choices?

THE WITNESS: That is right. If he would have to travel several hundred miles every time he had to conduct banking business as an alternative, I would say except for the largest customers these would be inconvenient, but in terms of traveling 25 or 30 or 40 miles within a radius that they are doing business in anyway, I believe that there are convenient alternatives.

Q And you believe, Dr. Baxter, that the average person would drive 25 miles to conduct his banking business when he has a bank that is able to provide him with most if not all banking services?

A I am not quite sure what you mean by the average person first of all, but I believe that there are a very large number of banking customers who could and would if they weren't satisfied locally go elsewhere. They can bank by mail, for example. They can do certain portions of their "banking business" in savings and loan associations, in mutual banks. They can save elsewhere. They can borrow [fol. 1381] through finance companies, so I think that there are convenient alternatives available if they are not satisfied locally.

Q Do you feel, Professor, that there is anything in the record to justify including the Nazareth National Bank as being a meaningful competitor of the two banks involved in this merger?

A I believe that the location of the bank would indicate that the customers in the area could go in and do their banking

business within a convenient trip. I don't know specifically of any evidence referring to this bank in the record.

Q Professor, you speak of what people could do from an economic point of view, don't you attach some relevance to the present habits of banking customers?

A Yes. I attach a great deal of relevance to that.

Q And are there not good reasons in your opinion why people might not choose to travel to do their business elsewhere in a bank?

A Certainly there are good reasons why they might choose not to travel, and the best reason I think is that they are being serviced adequately at home, and it is only in the event that they are not serviced adequately at home that we have to ask ourselves whether they can travel.

Q And is there not the other factor of the [fol. 1382] convenience of doing all of your business at one bank?

A For small customers.

First of all, major corporations always use several banks. They will have payroll accounts in the localities where their plants are, and they will have lines of credit for their depositing and lending activities. Their major activities are in the bigger cities where the banks are large enough to accommodate them, so for the major institutions I think the one-bank concept is not really meaningful, but I think you are referring to smaller business firms and individuals, and in this sense I agree there are advantages to using one bank. You get to know the people better. They get to know your business, and they can perform all the services for you, and in fact on this very point I recognize the convenience and needs aspects of this merger, because I believe that the people doing business with this bank would like to have the bank provide a wider range of services, a really meaningful trust service, larger loans for business corporations, and it is precisely because of a desire to have this relationship that I lay heavy weight to these convenience and needs factors which I described.

Q Would it be a fair rule of thumb in your opinion to regard a smaller customer as one who might borrow ten thousand or less dollars from a bank?

A Well it depends upon the size of the bank and the area [fol. 1383] which it serves. In the Manufacturers Hanover situation which is where the $10,000 guideline was first

established, and has been followed generally since, I believe, that is a very meaningful figure. I believe that was a very meaningful figure, and if I recollect I used that figure in the Provident-Central-Penn case. In that situation one was trying to distinguish between national market accounts and the general figure there that was used was over a hundred thousand. Between regional and metropolitan area sized customers say 10 to 100,000, roughly. Between local customers under $10,000.

Now I checked the proportion of business, the type of business of the Phillipsburg National Bank does, and the proportion of business that is over $10,000. It is in the interrogatories. The proportion of business in loans and deposits over $10,000 is fairly substantial. It varies from type of activity to type of activity, and we can check the actual figures if you like, but it is substantial, and I think perhaps for a bank of this size and this type of community that I would rather use $5,000 as being a dividing line. It is a different type of institution and a different type of customer, but even if you stick to ten the business of the customer is substantial.

Q What would you consider to be a large customer in this particular market?

[fol. 1384] A Well, I think that there are some customers—a large customer—let me define it in terms of what I think his alternatives are. A large customer in this market is one who could readily and easily go to New York or Philadelphia or beyond to transact his banking business, perhaps a loan of 50,000 or 75,000 or $100,000. It is difficult to get a precise number, but the large customer could go to New York or Philadelphia, and I don't think there are enough of such customers right now because of the nature of the area to include New York and Philadelphia in the trading area of the bank, except for those customers who are coming in for bigger loans, and we have had some evidence that there is a demand in the area for loans over the legal lending limit of the bank. I think I read testimony to say that there were twenty or so people a year who requested it, and of course not all those people requested it. The number of people who requested it is probably much smaller than the number of people who might have requested it, so there are a substantial number of customers who can go to New York and Philadelphia—perhaps 50,000—

Q Do you recognize that an area may be socially and economically integrated but not be an appropriate banking market?

A Well I recognize that there might be a situation, although I certainly can't think of one offhand, where an [fol. 1385] area is socially and economically integrated and yet could not be defined as a banking market. The banking market could be bigger or smaller than this, depending upon the number of customers, the type of customers, the range of their activities.

That is why I believe one has to examine the specific case at hand. I would start by saying that an area which is economically and socially integrated is probably a good banking market. Then I would examine the sort of considerations that I have discussed, and if I came to the conclusion that there was no profits going from one area or the other, that there were no charge customers who went in one area—who did business in one area and not in the other, that people lived in one area and never worked in another, that for some reason or another these were really separate markets—all the statistics that we have brought to bear on this question have told the opposite tale—then I would consider that this might be a situation where it wouldn't be a relative banking market. It might not be socially and economically integrated, for that matter. This is what we are looking at.

Q You have used statewide data, have you not, in certain of your studies and writings?

A In some situations statewide data is interesting and meaningful.

[fol. 1386] Q And you have used this statewide data where data with respect to a smaller area may have been more appropriate.

A There was one article which appeared in the National Banking Review—it's some time since I reread my own work—if I recollect correctly we did use statewide data for that article, and since it was available to us at the time—and I believe there is a footnote in there that states that SMSA might in some senses by a better market.

Q This is your article, "Banking Structures and Non-Banking Financial Intermediaries."

A Yes. I believe I would want before delving into that in more detail, I would want to take a quick look at that, if you want to go into more detail.

MR. WEINBAUM: May I hand the witness a copy of this?

THE COURT: If you are going to examine him on it.

MR. WEINBAUM: Yes.

THE COURT: I think we will take a short recess and get the air conditioner on.

(Short recess.)

Q Professor Baxter, with respect to your article referred to just before the recess, you indicate that there is only a mild presumption that the distribution of banks [fol. 1387] and their competitors is any more homogenious in a standard metropolitan statistical area than in an entire state, and I am wondering if you can explain what you mean by that statement.

A I believe that you are quoting from footnote 3 on page 306.

Q That is correct.

A This is a study in which we use state data to measure the effects of the banking structure and other economic variables on the total level of activity in terms of savings-type deposits and financial offices held by commercial banks, by mutual savings banks, and by savings and loan associations. We were trying to see what relationship there was between structure and output as measured by deposits and offices. We used the state data because—and I think to answer your question this background is necessary—because the structural variables we used, such as branching law, whether statewide or limited, or unit, these types of variables were available more readily on a statewide basis, and then we indicate as follows: "Consideration was given to the use of census-defined metropolitan statistical area data. The SMSA is probably a closer approximation of the relevant market for the products with which we are concerned. However, there is only a mild presumption that the distribution of banks and their competitors is any more [fol. 1388] homogenious within an SMSA than within an entire state." By this we mean that the state, as a unit of activity for these types of banking services has—in many states there are statewide banks or banks dealing all over the state. There are many statewide customers, so customers deal all over the state. If you look at the nation as a whole it seems to us that there are many states which are markets in the sense that there are banks operating throughout and customers operating throughout. When you put this all together and aggregate it on a national

basis, it is reasonable to think that this would be homogenious. It wasn't referring to a particular market and it wasn't referring to a particular SMSA.

Q You have also indicated with regard to SMSA data that this data are indicative only of performance in a big city and its suburbs and that the relationship may be very different from those in areas in which population is more dispursed, is that not correct?

A Yes. I agree with that, but what we were looking at here in an aggregate statistical study was relationship that can be deduced, holdings on an average based on data from the nation as a whole. We had a sample of states, in this case all fifty states, and we had certain data for each state, and we tried to differentiate the variation in performance in the states in terms of what factors caused [fol. 1389] that variance in performance. If we had used only the SMSA's we would be concerning ourselves with data derived only from that portion of the nation which looked at a big city and its suburbs. This has, I think, very little if anything to do with defining a trading area or a relevant market when looking at the competitive direction of an individual bank or group of banks. Clearly a New York bank must be looked at in terms of market structure and competition in the New York metropolitan area as well as wherever else it does business. Similarly, banks in Phillipsburg, it seems to me, must be considered in terms of that area, that standard metropolitan statistical area which are the big cities and environs in which they do business.

Only in an aggregate study when one is trying to deduce general conclusions about the nation as a whole is the comment I was referring to in this footnote relevant, I think.

Q You feel in looking at banking markets SMSA's are appropriate, not only in looking at a big city and suburban market but in an area such as Allentown, Bethlehem, Easton, Warren County, where the population would be more dispursed, is that correct?

A Well, I believe that this area that you have described, Allentown, Bethlehem, Easton, the standard metropolitan [fol. 1390] statistical area, which does include Warren County, is much more closely representative of the big city and its environs. That is why it was defined as an SMSA. It is not a city like New York or Philadelphia. At the same time, it is not a

rural area. It is in the SMSA, and it is quite typical of the SMSA of that size range and that size group.

Q You believe this area is essentially an urban area?

A I believe this area is essentially a metropolitan area with urban and rural population. Some urban population and some rural population, but it is essentially a metropolitan area and we have data to indicate that 70 per cent of the people in the area, in the SMSA live in urban areas, 71.3 per cent, Exhibit D-6, so the majority are living in urban areas, and they are all living very close to an urban area.

Q You indicate you have looked at certain banking habits of the people in this area in order to arrive at your conclusion about the market?

A I have read testimony in that regard and I have talked to some individuals, bankers and businessmen on a trip to the area.

Q Do you believe that price variances throughout the standard metropolitan statistical area would be any indication of separate banking markets?

[fol. 1391] A I don't know what–

Q Price differentials at which banks offer various of their services, for instance savings accounts.

A Well there are several factors which will determine the interest rate on savings deposits. In small rural institutions which perhaps are not very aggressive or not actively trying to get out in seeking these deposits it may be a policy of the bank men and board of directors to keep the rates low because they are not out looking for funds at this point. In other areas you may want to go right up to the top because you really need the funds. You have a big loan demand. You are willing to go out and pay 4 per cent or 5 per cent on savings bonds, 5-1/4 on the very large certificates, so there are several things which could explain the differential other than the market area. If all banks had the same policy and the same management and the products were exactly homogenious, then it is true that as a matter of fact that the differences should not be large if they are in the same market, but I don't think that this is necessarily the case.

Q Don't you as an economist find in a particular market definition some semblance of similarity in interest rates?

A For a homogenious product, the interest rate? There should be some similarity. Let me state also–and this is [fol. 1392] the difficulty with many studies done in this area

including my own—that the interest rate is only one factor in any loan agreement. There are several things that have to be considered to determine the price of the loan. There is the compensating balance requirement. There are the terms of the loan and on a mortgage the percentage of down payment and the number of years and so on. The interest rates themselves, the published interest rates are rather sticky. They don't tend to move, to reflect all the nuances and creditor worthiness and/or default risk, the other side of that, and all the changes in the market, so if we had a true interest rate which incorporated all of these things, then I think that you would expect them to be fairly close in the same market. We don't have this sort of interest rate, so there is a question that one looks at when one sees these figures.

[fol. 1393] THE COURT: As a practical matter, is there any such thing as an interest rate of that kind?

THE WITNESS: No, there is not. This is why—if I may comment for a moment, your Honor—when one sees interest rate differentials, the first thing I would do as an economist is say: Well, are there other factors that I can discern that might account for this? Does one bank have a compensating balance and another one not have one? Does one bank have a different credit rating customer and another bank not have one?

If I could not discern these things, then I would assume that the interest rates were based on comparable commodities. And in a statistical study, of course, one has to use these published figures simply because one can't go around to every bank in the area and derive all this sort of information, else the study you are trying to do would be outdated before it is done. So this is, of course, a consideration.

BY MR. WEINBAUM:

Q Turning for a moment to savings deposits interest rates, Professor, are there as many variables with respect to a passbook savings account as there would be with respect to a loan?

[fol. 1394] A Not variables in terms of the product that we are measuring, perhaps only variables reflecting the different policies of the banks, and their objectives in terms of gathering money.

Q Do you attach any significance to the fact that the Easton banks, for some period of time, were paying a three

percent passbook savings interest rate and the Phillipsburg banks were paying a half a percent more, and yet there wasn't any substantial flow of savings deposit money from Easton residents to the two defendant banks?

MR. MEYNER: I object. I don't know where the proof is.

THE COURT: Sustained. Even if there were, I don't recall any time period involved. There has been testimony in this case of payments of certain percentages on savings, and competition raising that rate, which was then followed by an increase at the institution paying a lower rate. So a time factor is involved.

MR. WEINBAUM: Your Honor, as of the end of the year 1967 there was an interest rate difference between–

THE COURT: How long did it last?

MR. WEINBAUM: It lasted–

THE COURT: Is this in the testimony?

MR. WEINBAUM: Yes, it is.

[fol. 1395] THE COURT: All right. How long did it last?

MR. WEINBAUM: It lasted up through July of this year. But it existed–and this is in the testimony–for some time prior to July of this year.

THE COURT: Well, I will tell you what you do. You proceed on the basis of a hypothetical question, setting forth what you conceive to be the testimony, and seek an answer on that basis. Of course, to the extent that I find that your hypothesis is not supported by the evidence, of course, the answer will have no value.

Go ahead.

BY MR. WEINBAUM:

Q Professor Baxter, if the evidence were to show that as of December 30th, 1967, and for at least a year prior to that time, the banks in Easton were paying a savings interest rate of three percent, and if the evidence further were to show that for the year 1967, and up through the end of the year, the defendant banks, and the other bank in Phillipsburg, were paying an interest rate on passbook savings of three and a half percent, and if the evidence further reflected, as set forth in Government Exhibit 21, that as of–

THE WITNESS: May I have a copy of that in front of me, please?

MR. WEINBAUM: Yes.

[fol. 1396] (Document handed to the witness.)

A (Continuing)–that as of year end 1967 the defendant banks attracted 6.1 percent of their time and savings deposits by dollar amount from Easton and environs, as we have defined this area in this litigation, what conclusion would you draw?

MR. MEYNER: I object, your Honor. There is no showing of what the flow was as of the date when the three percent was established–No. There is no amount showing how much in Phillipsburg and environs there was when the three and a half was established in Phillipsburg and the three percent was established in Easton. All he is saying in the hypothetical is that on December 30th, 1967, there was a certain amount, without giving any relationship between the period when the rate was established.

THE COURT: Well, as far as I was able to follow Mr. Weinbaum's hypothesis, or recital of the facts, which he claims is supported by the evidence, he rounds out his recital with a statement that the defendant banks attracted six and a half percent from Easton and environs.

Now, I don't know whether I have followed his question carefully, but just reasoning from that statement it would seem that to the extent that a bank in [fol. 1397] Easton wasn't paying the rate, the banks that paid the higher rate were attracting the business.

Now, did I follow your question?

MR. WEINBAUM: Your Honor, we are concerned with banks in the marketplace offering similar services at identical or non-identical prices. And the point we would like to ascertain here is, in light of an interest rate differential, should there or should there not be a greater flow of funds from Easton to Phillipsburg.

THE COURT: Did I understand you correctly to recite at the end of your hypothetical statement that during this period the defendant banks attracted six and a half percent of the deposits from Easton and environs?

MR. WEINBAUM: The exhibit indicates that the defendant banks had 6.1 percent of such deposits from Easton as of the end of the year. When they may have attracted this is something that is not shown. But the existence–

THE COURT: Well, I don't know. I don't have the exhibit before me. But I am just speaking of my understanding of your question, as I tried to follow it.

MR. WEINBAUM: I would just like to pursue, if I may, your Honor, what significance, if any, an economist would attach to

the fact that for a period of time banks [fol. 1398] in these two adjacent communities did do business with an interest rate differential in passbook savings.

THE COURT: Well, he has covered that in part. He told you, in answer to previous questions, that there may be variation in the rate, depending upon the policy of the bank, specifically whether it desired at a given time for its lending opportunities to acquire more deposits.

Now, there may be another factor involved in this. Go ahead with your question.

BY MR. WEINBAUM:

Q Professor Baxter, looking at Exhibit 21, can you tell us whether, in light of the interest rate differential existing as of the end of the year 1967, you would have considered the interest rate differential to be a factor in how people in Easton and Phillipsburg chose the bank that they were going to put their savings in?

A I don't have, from Exhibit G-21, the complete information to answer your question. What I need to know to answer this question is to take the people in Easton—I mean, essentially, as I understand what you are asking is, why are people who live in Easton, and who bank with the Easton banks, why don't they go over to Phillipsburg, if they can get a half a percent more on their savings deposits?

Q That's right.

[fol. 1399] A And if this differential is sustained for a long time, why haven't we seen these people moving from Easton to Phillipsburg? And from this Exhibit, I don't have that information, because I don't know whether this figure of 6.1 percent might have been two percent six months before. I don't know that. I don't have that information in front of me. I only see it as of one point in time. And at the same time it takes some period for an adjustment to be felt. I mean the differential between three and three and a half percent isn't that enormous that you are going to expect that everyone immediately, even if they have to move across the street, is going to go in and draw out all their accounts and go across the street to put their deposits over there. It takes some time—that you lose interest unless you wait until the end of a period; there is always a time period until you recognize the thing and try to do something about it.

I would only say in this regard that the very fact that the other banks followed, and everyone is now at the same rate, indicates that they are in the market, and they did feel the effect of this competition, or why else would they have followed?

Q And, conversely, Professor, if the record were to show that these interest rate differentials had existed for a length of time, say in excess of two years, would this [fol. 1400] be an indication to you that the banks may not have been in the same market?

A It would be an indication of several things. First of all, I am not sure that the differential between three and three and a half percent is significant enough to really move a substantial number of people.

Second, there may have been other factors which caused them to do the rest of their business in one place. They may have gotten better service on the rest of their business, and so they kept their time deposit, which was small and not really consequential. If you are talking about a thousand dollar or a two thousand dollar savings deposit, the difference in the interest rate might not really be enough to induce people to move across the street. And to see whether they are in the same market, you would say, clearly two banks which are, you know, right next to each other are in the same market, and yet you may get this very pattern existing when someone doesn't want to move from one to the other in response to half a percent differential. It may just not be enough.

Why else would people keep substantial balances, and sometimes some people do, in checking accounts, where they get no interest rate at all? Largely, perhaps, habit.

It takes some time to adjust. We know that historically average balances in checking accounts have declined relative [fol. 1401] to needs. People have become more aware, more sophisticated. It takes some length of time.

So I don't really think it is possible to draw the conclusion that this would imply, that they are in different markets. I mean to draw that conclusion you would really have to show no movement whatsoever in net savings. You would have to show very, very large differentials. And you would have to be able to explain it by no other reason. There would be no other counterclaim here. And so I really don't think that one can draw that conclusion.

Q You mentioned, too, that one of the factors would be people becoming aware of this interest rate differential, and you didn't know how long that might take, is that right?

A That's right.

Q And you are aware of the fact, are you not, that of all banking services and interest rates, that the interest rate paid on passbook savings is generally the one most familiar to people?

A I don't know what study you are citing in terms of what people are most familiar with. I think, from my own knowledge of banking, it certainly is one that is often advertised. And I would, from my own acquaintance, agree that it probably is the one with which people are most familiar. That does not necessarily imply that they will do something [fol. 1402] about it quickly, or that it is enough to make them switch, or necessarily, you know, what percentage of the people really know, how long it takes for them to know.

Q Do you know what banking statistics are used with respect to compiling standard Metropolitan statistical area data?

A I am not sure of exactly what statistics are used in that regard.

Q Do you know if any banking statistics are gathered with respect to SMSA's?

A In the definition of the SMSA?

Q Yes.

A No, I don't. I do know that in the SMSA—that much banking data is gathered by SMSA, for banking uses.

Q Does the Census gather such material?

A I believe that in the city and county data book, and in some of the SMSA statistics that are gathered, they have such series as bank deposits and bank debits by SMSA. Now, this is only my recollection and I would have to check that.

Q Is this information prepared by the banking agencies or by the Census Bureau?

A Well, I think what is normally done in these things is that the Census Bureau would request certain information from those agencies which have the primary responsibility for [fol. 1403] gathering it. We look at something, for example—if we look at the Federal Reserve Bulletin, which is,

to draw an analogy, published by the Federal Reserve System, and we look at the tables in the back, we will see that some come from the SEC, and others may come from the international organizations who have primary responsibility, some come from the Department of Commerce, others come from the Federal Reserve Research staff.

So my guess would be that they would be gathered by the banking agencies, simply because they are the ones with the information.

* * * *

[fol. 1404] THE COURT: Let's settle that quickly. What significance do you give to the Census in defining the standard Metropolitan statistical area?

THE WITNESS: Well, I believe that the main significance is that the Census Bureau defines what the experts, who are brought together from the different agencies, consider to be socially and economically integrated areas, based on the sorts of criteria which I discussed. And I am accepting a definition as being socially and economically integrated, and then bringing to this definition primary data to see whether I, myself, can support it in the particular case under consideration.

* * * *

[fol. 1406] BY MR. WEINBAUM:

Q You accept concentration ratios as a proper measure of anti-competitive effect, Professor?

A I don't believe that concentration ratios are, in and of themselves, very meaningful. I have said this. I think that taking into consideration such factors as the number of firms in the market, as the distribution in terms of size of the firms in the market, certain legal and regulatory aspects of the interaction among the firms, together with concentration ratios, all these things have to be looked at simultaneously to get a picture of what competition is.

Now, concentration ratios are used in statistical studies, they are used in exhibits, and so on, because they are a method of combining certain types of information in one

number that can be used in a statistical compilation. If they are used properly I think that they are helpful in increasing our understanding of competition.

Q You have indicated that thirty-nine percent concentration in the three largest banks in Allentown-Bethlehem-Easton-Warren County is low, is that right?

A This figure is lower than it is in most, if not all, of the other cities on that—I believe it is all—on that [fol. 1407] exhibit.

Q And what do you consider a high ratio?

A Well, I think it is difficult to put a precise number on what is high and what is low. I think that if we compare cities which have an eighty—SMSA's with an eighty or ninety percent concentration of the three largest firms, banks, and cities, or SMSA's, with thirty-nine percent, then one would say that the concentration is greater and perhaps the competitive—the ability of the largest firms to exercise some market power is greater in the cases where the concentration ratio is higher. That is the significance that I bring to that. And I think that we are dealing here with a banking market which is among the least concentrated in the country.

Q That is the Allentown-Bethlehem-Easton—the board market?

A Yes, the market that I consider to be the relevant one.

Q Do you have an opinion as to whether a sixty-nine percent concentration ratio is high?

A I think, Mr. Weinbaum, as I mentioned, that depends upon the context, the situation, the number of firms, the number of alternatives, the type of product, the size of the institution, the size distribution of the institutions, and the like. I don't like to take an absolute figure and say that it is high or low.

[fol. 1408] Q Do you believe that the relatively low capital requirements for establishing a bank are a critical factor in whether or not new banks are established?

A I brought up that fact for the following reason: If you look at an industry that requires very heavy capital investment, such as the automobile industry, or the steel industry, and you say, you know, we are merging two firms. And the argument comes that a new firm can enter the market. It is very often said, and I believe with a good deal of merit, that this takes millions and millions of dollars; it is not

very easy to get started; the chance of failure is very great, because you have an enormous capital investment to enter a market, and so on.

To draw the opposite distinction, in banking $200,000 is an amount of money which many successful businessmen in an area such as we are discussing can raise to invest. You take a group of several men and they put up this amount of money, and if they are successful in meeting the other requirements, they can get a charter and they can enter the market. It is not starting up a steel company. So that the potential danger of a merger is lessened by the fact that if there are excess profits here, all we do is get together a group of businessmen, and two or three hundred thousand dollars, and meet the criteria, and we can get a charter and successfully compete in this market. This is [fol. 1409] the distinction that I was trying to draw.

Q Have you studied figures with respect to the State of New Jersey on the point of new bank charters or the diminution of banking facilities in the State?

A While I am familiar with banking in the State of New Jersey, I am not certain what specifically you are referring to. The policies of the establishment of national banks are not set on a state-by-state basis.

Q The FDIC figures indicate that from 1957 through 1967 the number of banks in New Jersey has dropped from 271 to 228.

* * * *

[fol. 1412] Q Professor, you talk a good bit about cost savings as a result of this merger.

A Yes.

Q Are you familiar with any of the works of John Benson or Bell & Murphy or Mr. Horvitz on this particular point of cost savings?

A I am familiar with Benson's work. In fact, it was Benson's work which led me to my second calculation of a minimum $22,000 a year saving.

I am generally familiar with Bell & Murphy's for some time, and Horvitz has written a great deal in this area. I have read some of it. I am not sure I am familiar with all of it.

Q Are you aware of the fact that Benson indicates that efficiency of operations is not a function of bank size?

A No. I don't want to comment on an out-of-context quotation. I would like to have the reference and study it, and I can provide other quotations from Benson which will say that as banks grow they are able to reduce costs substantially.

Q These are banks usually over the five hundred million figure, are they not?

A No sir. I have some notes here that I would like to lay my hands on on economies of scale in particular.

[fol. 1413] Q And. This was a study done by Benson which was published in the National Banking Review in June 1965 entitled "Economies of Scale and Marginal Costs in Banking Operations" and that is a study which I used to get my second estimate of the savings which would come from this merger, and as I remember it–I could check it if you like–he used banks from the New England area, data provided by the Federal Reserve Bank of Boston. I believe he had 80 banks in his sample. Perhaps it was a few more than that, and all the banks were in the three or four to five million dollar range. This was a study only of small banks, and he asked what happens in several areas of activities, demand deposits, time deposits, mortgage loans, installment loans, business loans, securities, and a few operating-type activities to the cost of operations. What happens as the bank grows, as the number of the accounts or loans increases, what happens to the costs of operations and the economies of scale. The conclusion he comes out in this study with are some elasticities which show the proportional change in expense for a 100 per cent change in each of these items, and if these elasticities are under one, this indicates economies of scale. If these elasticities are greater than one this indicates increasing cost, and the elasticities were less than one virtually across the board.

I think there was one operating category, not in [fol. 1414] any of the loans or deposits, but one operating expense was about equal to one, and deposits was .8–seven-eighths, for example. This was the evidence that this particular Benson study came up with, and if you have a quotation of his that contradicts this I would like you know, to see the background of it.

Q Have you not come across studies which do indicate that there are not cost savings with respect to increased bank size?

A The preponderance of the evidence that I have seen on economy of scale indicates that there are substantial or significant cost savings up to bank size of about $200 million, and it is very questionable how much economy there is in the billion dollar range. There is some evidence of some economies of scale. It is clearest, the evidence is clearest in banks under $200 million. I think this is the generally recognized conclusion by people in this field. There may be one or two studies which come up with no significant result, but I don't know of any studies which come up with the opposite result.

Q Can you explain in more detail this study that you made which shows the bank would save $22,000?

A Yes. This is the study based on Benson's work, and what I did was take the current number of accounts for demand deposits, time deposits, mortgage loans, installment [fol. 1415] loans and business loans, the main categories, just these items, so I get an underestimate figure for that, but these were items I thought we could handle best. I took the number of accounts in the Phillipsburg National Bank, the number of loans and the number of accounts or loans in the Second National Bank and added them together. I had Phillipsburg National's and then I have Second National's and then I computed very simply the percentage increase in accounts. If the two get merged, immediately, pro forma, without changing any of the mix of activities, which is the first assumption, you know, what the increase would be to Phillipsburg National on their base, and demand deposits was 59.5 per cent and time deposits was 48.1. Mortgage loan 80.5 per cent and so on. I then took Benson's elasticities and by multiplying these elasticities, which I just referred to in answer to your previous question, by the percentage increase in accounts I come up with a figure which gave me the predicted percentage increase in expense for the Phillipsburg National Bank. The accounts increased by 50 per cent but the expenses had only increased by 40 per cent if the elasticity is .8, so this is what we are trying to derive.

Q How do you conclude that the expenses would not increase?

A The expenses would increase, but according to the [fol. 1416] study by Benson the expenses would increase less than proportionally. In other words, the demand deposits go up by

60 per cent and the expenses would go up by only 52 per cent, so it wouldn't be quite in proportion, and this is where the savings come from.

Then I used a publication of the Federal Reserve—not a publication—a compilation by the Federal Reserve Bank in New York called "Functional Costs Analysis." Now these functional costs analyses are done by the different Federal Reserve Banks for member banks in their district to compute the costs of operations and compare them with the average of other banks in the district. Unfortunately, we had a functional cost analysis only for the Phillipsburg National Bank. The Second National Bank never participated in this with the Federal Reserve Bank of New York, and hence we had to assume that their expense ratio was the same as the Phillipsburg National Bank expense ratio. Now I should emphasize that this would tend to make the savings that I come up with too small, because from our general knowledge of the bank and the general economies of scale, the Second National Bank probably has higher costs of operation than the Phillipsburg National Bank, so I am making a very conservative assumption, not simply because I didn't have the information on the Second National Bank, and I have the current expenses per function. I have the [fol. 1417] predicted expenses by looking at the percentage increase computed, and then I compare the predicted expenses with the total current expenses. I get a savings on the demand deposit function of 12,000 a year, on the time deposit function of 3,000 a year, on the mortgage loan 3,000, on installment loans 4,000, on business loans of 1,000, since they are so small, and so for these five functions, given the conservative assumptions we had to make, I get a $22,000 savings.

Q Did this study of yours take into account any increased cost resulting from the operation of additional branch offices?

A We know that, other things being equal, it was quite true that additional branches lead to higher operating costs. This is another conclusion found by the studies on economies of scale which we are talking about, but if we put these two banks together, initially the number of branches are not changed. To offer the community the services that they are getting today there are five operating branches. After the merger there will still be five operating branches.

You are asking now what happens if, as some people have indicated, the banks go out and open up a new branch a year or two later. Well, the answer to that is that the new branch will undoubtedly cost money. In fact, [fol. 1418] that is one of the reasons that the economies of scale are so important. The new branch will cost money. It will require capital investments. It will hopefully yield profits and returns in the form of new business that will make it more than pay for itself, but right now we are holding the number of branches constant by the merger.

* * * *

Q Do you believe that the larger borrower in the Phillipsburg area can go to a large city to get credit with relative ease?

A We talked about that a bit earlier, and what I indicated was there are some large customers of these banks who can obtain credit in New York and Philadelphia and other large cities, that all the customers have available to them alternatives in the trading area that we defined, and some of the biggest customers can move outside this area.

Q And do you regard the cost of going to New York or Philadelphia as significant?

A The cost is significant—the significance of the cost depends on the size of the business that you are doing. If the customer had to go to New York or Philadelphia to take out an installment loan on his automobile, I would [fol. 1419] regard the cost as very significant. If on the other hand the question was negotiating a line of credit of half a million dollars or more or even less, $200,000, I would say these banks are in the market, because when you go to negotiate a line of credit of a few hundred thousand dollars you certainly don't do this every day. You do it once a year. It is only a two and a half hour drive to New York. It is much shorter to Philadelphia. I don't think that that is really very significant on such an important aspect of the business.

I would say just to add—or repeat one thing: for the very small customer yes, I don't believe New York and Philadelphia are in the trading area, but they weren't put in the trading area.

Q How will the community benefit, Professor, if in fact these large borrowers are able to go to these big cities for their credit needs?

(Question read back at the request of Court.)

THE COURT: Is there any dispute about the fact that they are able to go if they want to?

MR. WEINBAUM: There is no dispute about that fact, but we are talking about convenience to the community, and I think we have to look at factors other than the larger borrowers.

THE COURT: Can you answer the question?[fol. 1420] THE WITNESS: Yes. I think the community will benefit by the fact that the community won't be losing these loans, won't be losing these customers. We are interested in the ability of local banks to serve local customers. That is what I believe this whole subject is all about, and if they can serve them adequately and they have to go elsewhere, then they are not serving them. The community loses out because the loans will flow out and the deposits will flow out and the area won't be able to meet the demands. What is relevant for competitive purposes, they should be able to go out, because their very ability to go to New York and Philadelphia and the competition thereby derived from the New York and Philadelphia bank is what makes the prices and the performance in this market very good and very attractive and competition from outside together with the efficient operations from within enables the community to meet the demands of the customers, and that is what to me convenience and need is all about.

Q You did compare these defendant banks to banks throughout the country as far as deposit ratios were concerned, did you not?

A That is correct.

Q Would you agree that these ratios are somewhat [fol. 1421] different in the Lehigh Valley area than they are in the country as a whole?

A Yes, I would. That is in the same exhibit before, and I would like to talk about that, if you would like that. That is why those figures were in the exhibit. I didn't want to burden the record by discussing the entire excerpt during direct testimony.

THE COURT: What is your question?

MR. WEINBAUM: I just wondered if he recognized that there was this difference.

THE COURT: I think he answered that question. What is your next question?

Q Do you agree that the various loan ratios of the banks in the Lehigh Valley area are somewhat different than those found through the country as a whole?

A You are defining the Lehigh Valley area as what we call our trading area, is that correct?

Q That is right.

A Yes. That is true. They are closer to the national average in many cases than are the activities of the two subject banks. On real estate loans, for example, the ratio for the trading area banks is 28 per cent. For the two subject banks 33 and 44 per cent. Now this is the type of area that has a need for real estate loans, for consumer credit, much more heavily than it does for commercial [fol. 1422] and industrial loans. That is true, but that doesn't necessarily–but the purpose of this exhibit was to show in the types of business that these two banks are doing and indeed that some of the other banks in the area are doing there is precisely the sort of business where your competition from other financial institutions that are involved in the borrowing and lending of money, this is precisely the sort of business in which this competition is most intense, savings deposits, which are indeed 5 per cent, higher for these two banks than for the area as a whole, and real estate loans. This is the picture we were trying to get across.

Q On what basis do you conclude that the larger bank is going to go out and compete in a wider area than it presently is?

A The basis for this is that it is the intention from the testimony that the bankers will desire to hire experts, commercial and industrial loan experts and a mortgage expert and a trust expert specifically. Given this intention and given my own evaluation of the situation which would indicate to me that it is both feasible and looks profitable to do so, if the institutions are merged I would come to the conclusion that such people could and would be brought in and if these people are brought in, knowing something about the functions of banks, I said why, what are [fol. 1423] these people going to do. One of the things they are going to do is go out and solicit business, and once they have thoroughly combed the immediate environs, which I think will not take very long at all, they will

immediately be looking out and be more aggressive out in the further reaches, 20 and 30 miles. They will have the talent to do this.

Q Are you aware of the fact that there are larger banks in the Phillipsburg-Easton area that are not going out and aggressively seeking business in a broader area?

A I am aware of the fact that there are larger banks in the Phillipsburg-Easton area, as you define it, to answer the first part of your question affirmatively. The answer to the second part of the question is much more difficult, and we had a lot of testimony indicating that they are out on a 20-mile radius, that they are seeking business in a 20-mile radius. We have had some testimony that indicates that they are not actively soliciting in all parts of the trading area as we define it. I have read, for example, one of your witnesses, Reese Jones, whom I know for quite a while, and I have spoken to him in connection with this, and I don't want to interpret for the Court the record of what he said, but I believe he indicated that he would be out soliciting trust business in Warren County, for example, and I believe that he also indicated that should [fol. 1424] economic circumstances so dictate, should he find it profitable after he gets his own business where he wants it, so to speak, that he might consider branching into Northampton County, which is allowed in Pennsylvania, and that he would be more aggressively seeking business here. I don't want to interpret, you know, the statements of any specific witness, but my understanding of how these banks compete and interact indicates that many of them do go out and aggressively seek business. Some of them are more conservative in their modes of operation, but I have every reason to believe that these two banks, from what they say, and what I know about them, would join the aggressive group rather than the conservative group.

Q In your conversations with the bankers in this area, did you get any sort of an idea that there might be an absence of competition at the present time?

A I have no such impression.

Q That bankers in these various localities would tend to stick to their immediate localities.

A I am not really sure what you are indicating. I think that many of the bankers in this area do move out and try aggressively to get business. I want to say one thing in terms of interpreting interviews of bankers–

THE COURT: Don't go into interpretations.

What is your next question?

[fol. 1425] Q Well did you in your conversations with bankers, did you reach any conclusions to the effect that there is not a great deal of competition from one locality to the next in this broad area?

THE COURT: I think he answered that a moment ago. He said he gave no such impression. Is that correct?

THE WITNESS: That is correct.

Q Exhibit D-4 which you referred to, Dr. Baxter.

A Yes.

Q Did you endeaver to get any statistics with respect to banks under $100 million, aside from the two defendant banks?

A No, no I did not.

Q And do you think it might be a more relevant comparison if you did get information from the smaller banks?

A In terms of the nation as a whole, is that what you are referring to?

Q Yes, in terms of the nation as a whole.

A I think that the information for the smaller banks in the nation as a whole—of course there are mostly smaller banks, mostly banks which are smaller than these when we are talking about all commercial banks, and you are talking about—if we excluded those banks that were larger than [fol. 1426] $100,000 this would reduce the ratio some—certainly for commercial and industrial loans, the difference between the figures of the weekly borrowing for the banks and all banks would indicate the activities of all borrowings, and the figures would be somewhat different, and I believe I would draw the conclusion from the information that small commercial banks are characterized—or should be characterized very much the same way that I characterize these two banks in Phillipsburg. They are involved in the borrowing and lending of money. They are right in competition with all these other financial institutions. I was trying to show here that the real estate loan function, that the time deposit function were very important for these two banks, and I think you will find that they are very important for so many of the banks in the smaller size category.

* * * *

[fol. 1427] EMANUEL GNAT, recalled, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (Continued)

BY MR. MEYNER:

* * * *

[fol. 1432] Q You made some reference to unincorporated associations in your direct testimony and there was some question as to whether or not there were unincorporated municipalities in this area.

A Yes. All right. Just to clear that up, I have before me a copy of the Journey to Work, which is the document in question.

* * * *

[fol. 1433] "Since the city that actually contained the place [fol. 1434] of work was frequently a central city of an SMSA the original data of both Tables 1 and 2 were impaired."

In my testimony I indicated what that meant in this case, as far as I could determine. Allentown and Bethlehem is such a city, as a lump. Easton and Phillipsburg is such another. Anyone living in incorporated townships on the periphery of these two areas, it is not clear that we definitely have determined where they actually work, because they were put down as working in their township, their little township, instead of Allentown or Bethlehem, either they might have worked in, or their little township instead of Easton or Phillipsburg.

So that is not clear. And the significance to this case is that those four cities are not only contiguous to each other—that is, two are together and the other two are together, the same common boundaries—but they are also county lines. So that if we got these workers placed in the right city we might well find that you have a change of numbers of workers going over county lines.

The unincorporated areas in this tabulation, when they answered that they work "here" it was assumed by the enumerator that they worked in the nearest big city, which doesn't mean anything as to actual valid data.

So if I were, as I said in my prior testimony—if I were given a mission by my company to determine the [fol. 1435] numbers of workers that flow across county lines, and I were given this

data as my reference, I would have to say I couldn't use this data, it is invalid for the purpose.

One more very important thing. The Government tried to make a manual adjustment of this error.

"After a limited study of the relevant materials, including some of the household questionnaires, it was decided that a simple mechanical edit would tend to improve the statistics. This mechanical edit applies to entries for workers living in unincorporated parts of the county containing the central city of an SMSA." That's this case. "For these workers a work place code of 'this city' was tabulated as the largest city in the county. This edit was not used in New England, New Jersey, or the urban townships of Pennsylvania."

So where they found an error they manually tried to adjust it. And for reasons that they try to explain here, they did not make that manual adjustment to New Jersey and the urban parts of Pennsylvania, which, of course, would include the area in this case.

* * * *

[fol. 1440] CHARLES LEWIS, sworn.

DIRECT EXAMINATION

BY MR. ROACHE:

Q Will you state your address, please?

A 6201 North 10th Street, Philadelphia, Pa.

Q Where are you employed, Mr. Lewis?

A First Pennsylvania Bank & Trust Company in Philadelphia, Pennsylvania.

Q What is your position?

A I am assistant vice-president in the correspondent bank department.

Q Could you give us your educational background?

A Yes. After graduation from high school I attended Temple University, graduated from there with a BS degree in business. In 1956, after that I served two years in the Army in various capacities, and I was discharged from the Army as a Captain. I returned to the First Pennsylvania Bank in 1958 where I was a member of the bank's operations training

program for approximately four years. After that I worked in the treasurer's section and ran the main office of our bank. While at the same time attending courses at Rutgers State University, Graduate School of Banking. Temple University, School of Law, and the Temple University [fol. 1441] School of Business Administration in the Master's Degree Program.

Q Could you give us an outline of your work experience?

A Yes. Since being employed by the bank in 1954 I worked in their retail banking department. I have also been on the bank's operations training program, as I mentioned before. After that I worked in the main office.

Q Could you give us the dates, if possible?

A I was employed in 1954. I worked in retail banking until 1956. I then took a two-year leave of absence to work in the United States Army. I returned to the bank in 1958. From approximately 1958 through 1961 I was a member of the training program. After that I worked in the main office from 1961 through 1965.

Q Doing what, sir?

A Basically assisting with the treasurer's function in the bank, in the operations department, as well as supervising and managing the daily operation of the largest branch we have in our system, being the main office.

After that I was assigned to the correspondent bank department in 1965, and I worked approximately one year on the inside, as we call it in this department, meaning by that not traveling, visiting actively the customers. In 1966 I was assigned to an outside territory. This was preponderantly the State of New Jersey, seventeen Counties in the State of [fol. 1442] New Jersey, and this is a position that I still hold with this bank, and as an incident, part of this I basically call upon banks in that territory.

Q What is the size of the First Pennsylvania in terms of assets?

A Approximately 1.8 billion.

Q Could you give us the size of the correspondent bank division?

A Yes. There is approximately 550 banks throughout the United States that maintain accounts with us, and we do various things for them in return for the accounts. The balances that they maintain with us would total approximately 220 million dollars.

Q Is your correspondent bank division divided up into areas?

A Yes, sir, it is. There is approximately eight men in the department that actively call on accounts in the States of New Jersey, Pennsylvania, Washington, D. C., and Maryland, and then in addition to that we have a national department that has approximately ten officers of the bank with active calling responsibility in those territories.

* * * *

[fol. 1443] Q Do you render any other services to the banks that you have not included?

A Yes, we do. The range of services is as vast as [fol. 1444] whatever the sphere of domestic operations of the bank might be. It might encompass the handling of international transactions, the working with the bank as far as solving certain operational problems they might have, as well as personnel problems that they might have within the framework of the bank.

* * * *

[fol. 1445] Q Could you give us some idea of what the salary scale would be for presidents in banks, and the size bank that this would apply to?

A Yes. This is a broad generalization, by the very nature of it, but taking into account the size of the bank we would think basically in terms of approximately $25,000 to $30,000 for a very aggressive president with a fine background experience and prowess in the area of banking, a commercial bank of approximately thirty, forty or fifty million dollars, whereas a ten million dollar bank normally they would be looking for a president in a much lower range, and there are instances where a bank is highly in need of a skilled person, and they are a larger bank and they are in a position to afford the talent, so they offer a price greatly in excess of $30,000 per year.

Q Would you know the salary range of a man to head a trust department, to take complete charge of a trust [fol. 1446] department for a bank?

A Yes, sir. Normally I would think in terms of a trust department encompassing somewhere between a million and

five or six million dollars in a smaller bank. Normally we would look at the job and say you require five to six million dollars in trust assets before you can actually break even on trust business.

As far as paying the talent required to supervise the trust operation, I would think in terms of a bank that would either have or be looking forward to having or looking to this man to develop a five to six million dollars trust operation to be a fully qualified person, preferably an attorney, and I would think there the minimum salary would be $18,000, and it would not surprise me—and I have seen instances where the offering salary has been as high as twenty to twenty-two thousand dollars, where they really want to get into the trust field.

Q What would you believe would be the salary range for a man to head up the commercial and industrial loan department?

A Well, a commercial or industrial loan department would have to be headed up by a fully qualified lending officer. This requires a good deal of training and experience. In our bank, for example, the initiate is given approximately four years of intensive training on statement analysis and basically dealing with situations involving the more [fol. 1447] sophisticated credits. The question is how high-powered an individual do you want to put on the scene, and this you normally answer in terms of the business that is available and that you are seeking in the given area. It would be illogical, for example, to put a commercial lending officer, a well-rounded, fully experienced lending officer in a branch that has nothing but personal loan business, but in a situation where you can logically anticipate and you are in daily contact with more sophisticated loan situations you would require a very talented individual, and I would think the minimum asking price in that area would be $18,000 to $20,000.

Q What would you think the salary range would be for a man to head up the mortgage department?

A Well, a mortgage lending officer, fully qualified, possesses less talents than one that would handle a complete commercial and industrial portfolio. Normally this is regarded as a specialty and the price in that area would be roughly $16,000, in my judgment.

Q From your experience could you state what size, minimum size do you believe would be in a position to, considering the variables, to hire these three individuals?

A Well, I would say that we would have to look to a bank of a minimum size of thirty-five or forty millio[n] dollars, because once you acquire this talent and you are willi[ng] to [fol. 1448] pay the price to get the talent the talent is ex[pected to] perform, and one of the first things that I would [expect an] aggressive young president to do would be to take a [keen look] at the other salaries within the organization, becaus[e there is] nothing more disturbing to employees working in a [bank than] to have a president come in at a salary—and sa[laries are] confidential but oftentimes the word gets around—and here you have brought a person in, you have paid him a salary that is disproprotionately large in relation to the salaries that the rest of the employees are being paid. Consequently it is normal there to look for an adjustment of salaries. I would look for possibly a consultant to evaluate the jobs in the area in the bank, to give you a write-up, a description of the duties, and to relate the duties to the compensation being paid.

Q So that hiring the individuals by themselves does not solve the problem. There are other problems.

A Very definitely, because once you have the t[alent you] have got to use it, and it certainly wouldn't be a very [effective] way to use it to merely acquire a trust man and throw [the entire] trust department on his back and then have the d[isgruntled] employees working for him, because they are ex[pected to] perform a certain amount of function and assist hi[m, and yet] they are being disproportionately paid in relation [fol. 1449] to the salary he receives.

Q Are you familiar with the two banks involv[ed in this] litigation?

A Yes, sir. I am generally familiar with them, a[lthough I] have not made an in-depth penetration study of them.

Q Do you know their assets, deposits, and are yo[u familiar] with their earnings?

A Yes, sir, in general terms.

Q Do you have the general familiarity with the p[ersonnel?]

A Yes. I have met several of their officers. I [have been] physically in the bank. I am familiar basically with th[eir history] and method of operation.

Q Do you think that these banks separately coul[d hire the] individuals we have just mentioned?

A No, sir. Based upon my experience there woul[d be great] difficulty for these banks individually to acquire [the talent]

necessary to shape an aggressive institution that would be in a position to actively compete in terms of today's market. Today's market encompassing that which you could also logically anticipate in the form of business moving into the area.

Q Are you familiar with Warren County?

A Yes, sir. I am familiar with Warren County.

Q Do you know whether there has been much growth [fol. 1450] in Warren County?

A Yes, sir. It is my belief that based upon my experience here over a period of approximately one year where I spent a good bit of time in Warren County, that there is a very definite trend for industry which is preponderantly located in the New York-Newark Metropolitan complex to move out into Morris County, Warren County, Sussex County, and Warren County has received and will continue in my judgment to receive its share of that growth.

Q Do you believe that there is trust business and commercial and industrial business available to be had by local banks?

A Very definitely, and I would say that in the solicitation of their business it would be important to keep in mind that you must have the talent to deal with these more sophisticated situations. You have individuals moving into this area for retirement purposes because preponderantly Warren County is a very lovely recreational area, and on the other hand you have industry moving in, and the industry moving in is not the small growth company that would require a small accommodation. What they are really looking for is a bank that is able to meet the entire panorama of their financial requirements, and it would be absurd for a plant that requires twelve million dollars to go to something like ten or twelve or fifteen banks in order to get the money when [fol. 1451] they can get the money elsewhere. If you had an organization that required $200,000 and they can go to a bank in the area and get it they are far more likely to go to the bank for convenient banking and whatever you have if the bank has the capacity, the lending limit to provide the accommodation that they require

* * * *

MR. ROACHE: That is all I have.

CROSS-EXAMINATION

BY MR. WEINBAUM:

* * * *

[fol. 1457] Q Have you seen any banks $25 million and under hire various specialists as they grow?

A Yes, I have seen banks of that size hire them normally in anticipation of what they are going to do with the individual.

Q And have you seen any of these banks, $25 million and under, as they are growing delegate more specific responsibilities in given areas to people that they already have in their bank?

A There is a trend—or a concept of operation whereby in a small bank people tend to develop skills and become jacks of many trades. But I am not at all convinced of the success of this technique in terms of actually developing a growing, vibrant, vital, aggressive business in the banking field. I just really don't think it can work.

Q In your opinion, Mr. Lewis, could either one of these banks go out at the present time and hire one of the three types of officers that you have mentioned?

A Could they now go out and hire one of these people?

Q Just one.

A There are earnings there that would allow them to go out into the market and buy one of these people. But just what answer that might provide to the problem, I don't know.

[fol. 1458] Q But it would give the banks, for instance, specialized knowledge in commercial lending if they hired a full-time commercial lending officer.

A Sure. But they still have a need for a trust officer and they would still have a need for a person with executive capacity. And the one that has the executive capacity is not necessarily a good lender, nor is a trust man a lender.

Q Is there any reason, Mr. Lewis, why these banks couldn't hire these various types of officers they needed one at a time as the banks developed?

A I see no reason why one in a given situation like that couldn't take that approach to the problem. But I am not at all sure that this is going to provide any kind of an answer or a panacea to their immediate problem, which is becoming large enough to effectively compete with the competition that they are faced with and with the business that is going to move into

the area. Certainly I can hire one person at a time and build an army. But, doggone it, if I need a regiment, it is not going to do me one iota of good to have one person sitting out there to hold off another regiment. What we really need here is talent in three definite specialized areas. And if you acquire that talent, by almost absolute inference you have to evaluate and adjust the other employees–the salaries of the other [fol. 1459] employees that are working in the bank. And this would require an entire adjustment of the salary structure. And it would require a very close review of what the earnings result would be after you made these adjustments.

Q Do you actually work out participations with the correspondent banks in your area?

A Yes, very definitely. There are participations that we take from banks, being normally parts over the limit of loans that they have developed in their area. We also supply banks with participations of loans that we have generated. My prime ability or prowess in the banking field is not one of commercial lending. On the other hand, I have a fair knowledge of it and I am deeply involved with many situations. But I would normally work in concert with a specialist in our area, as I would with a computer problem, or a trust problem, or any other problem that I might be faced with.

Q And do you encourage banks to take advantage of your participation facilities whenever you can?

A Yes, very definitely. We are seeking indirect business. If there was a large piece of business that came in and the bank was disposed to call upon us for assistance in handling it, certainly I would be grateful for the opportunity to work with them.

Q And do you endeavor to handle these participations [fol. 1460] as expeditiously as possible for your correspondents?

A Very definately. Although I cannot substitute my judgment, or the judgment of anybody in our bank, for the judgment that the bank has to make on their share of the participation, or actually in terms of their evaluation of the entire credit.

Q And do these correspondent banks indicate to you that they are generally satisfied with the manner in which you handle their participations?

A Yes, I would say that we manage to do this to their satisfaction.

* * * *

[fol. 1461] WILLIAM PAUL SMITH, sworn.

DIRECT EXAMINATION

BY MR. ROACHE:

Q Give your address, Mr. Smith.

A 3402 Dodge Park Road, Landover, Maryland.

Q What is your profession and employment?

A I am an economist, particularly an industrial organization economist. And at present my principal employment is senior economist in the Office of the Comptroller of the Currency.

Q Will you briefly outline your educational [fol. 1462] background.

A I received a Bachelor's degree in economics from Drury College, Springfield, Missouri, with departmental distinction in economics, I received my Ph.D. in economics from Northwestern University.

MR. WEINBAUM: Excuse me, your Honor. We have a comprehensive biography here which could be put into the record, if it is agreeable with the Court and the intervenor.

THE COURT: All right. To save time–

MR. WEINBAUM: We don't question his qualifications.

THE COURT: Well, maybe counsel wants to make it a matter of record. But if you want to mark that in evidence–I will have to read all this material, anyway.

MR. ROACHE: We will put it in evidence as GI-29.

(Exhibit GI-29 received in evidence.)

BY MR. ROACHE:

Q Dr. Smith, you said you are an industrial organization economist. What is an industrial organization economist?

A I think first I want to draw a distinction that maybe should be drawn. We are concerned with markets, not [fol. 1463] manufacturing industries particularly, but the functioning of markets. And I think the prime concern is largely what we call the functioning of markets, be they manufacturing, or retail, service of various sorts. And by performance we have in mind the prices, both of output and input; we have in mind the capacity, output relationships,

progressiveness of the industry, innovations, responsiveness to demand, both in terms of level and composition.

And in trying to draw inferences to appraise the performance of an industry we rely on a fairly intricate body of economic theory called the theory of the firm, the theory of the market. And that is something of a misnomer. There are a number of different theories, all of which relate in some fashion to performance, which I just outlined, to the structure of the market.

And by structure I mean number of firms, their relative size in the market, their absolute size. It matters whether a firm is a billion dollar firm or a ten million dollar firm.

We are concerned with what we may call potential competition as an element of structure. And there are other things, product differentiation is sometimes mentioned.

Then we rely on our body of theory, or our theories, to relate variations in structure to performance. [fol. 1464] And here the connections depend upon how firms behave, the policies, devices, the techniques that they use—I like to say rivalry between them, their behavior, their conduct. And briefly the performance that we get in theory depends very crucially on how firms behave, the forms of rivalry that they undertake, whether this is price, which is greatly exaggerated in most industries—this is not the principal form of rivalry. The principal forms are in terms of product attributes—in banking this would be tailoring the loan to the requirements of the customer. It might be in banking maturities. In automobiles you get the horsepower, the air conditioners now, a variety of non-price factors.

And I think most studies of non-financial markets show that these non-price factors are very crucial in understanding the performance, the functioning of the market.

Q Have you studied this proposed merger, the various aspects of the proposed merger?

A Rather intensively.

Q How did you study it?

A Well, to start with, one has to rely on his theoretical background and rely on a rather elaborate body of literature on competition and banking markets, on the effects of mergers in banking markets. This is the sort of background that we start with.

[fol. 1465] And then in this particular case I believe that I have seen the complaint, the pleadings. Before that I had seen the merger application itself. I have I guess, with three or four exceptions, heard or read all of the testimony here. I have seen all of the documents that have been submitted. I have read the depositions. In fact, I was responsible for preparing the Government intervenor's documents for this case, with a couple of exceptions.

Q Did you refer to any other data relative to other institutions as opposed to the two banks involved?

A Yes. To start with, there are rather elaborate bodies of statistical studies, reports, put out by the Federal agencies, the various State agencies, both with respect to what I have called structure, not only of commercial banks, commercial banking markets, but the competing institutions. And then there is an elaborate body of data which bears directly on performance, performance of analogous banks.

Q You stated that an industrial organizationalist considers market structure and performance within the market. How do you define a market?

A I think, to start with, in general terms, a market is composed of an interrelated group of buyers, sellers, and what we are concerned with in this interrelationship is the interactions amongst these, which collectively lead to establishing maybe price, the terms, the quality—I [fol. 1466] mentioned the characteristics of loans a while ago. And geographically we have to encompass all the firms that bear on this for the problem at hand.

And in terms of products, we have got to delineate our products and be sure that we not only encompass the firms that have the same sort of legal charter, but the other firms that provide the same product.

Q What did you determine the relevant market to be in this case?

A To start with, it clearly must include all of Warren County, New Jersey; it must include portions—the northwestern portions of Hunterdon County, New Jersey. I don't think there is any ambiguity that it must include northeastern portions of Bucks County, Pennsylvania. And to my mind there is no ambiguity that it includes Northampton and Lehigh Counties in Pennsylvania, in addition to that portion of Bucks County.

Q You said the prime concern of an industrial organization economist was to assess performance. Did you make any performance studies in connection with this case?

A Yes. It seems to me that we are dealing here with—we have a $22 million bank, a $16 million bank, measured in deposits. They are combining. And there is a great deal of evidence that bear on the size of these banks, their performance, and the size of the resulting bank, the [fol. 1467] performance that one would get from such sized banks. And the data are readily available that refer to banks of these size groups.

So I looked at in particular the rates that are paid on time and savings deposits, the rates that are charged on loans. I looked at—and this gets into the capacity, output relationship—the loan deposit ratios, roughly, the proportion of available funds that are devoted to meeting the credit needs of the community. And, if I may briefly tell you—

Q I would like to know what conclusions you reached, what results you got from your studies.

A I don't think there is any ambiguity. In fact, I just didn't run on to any conflict. The rates that the larger institution pays, the 25 to $50 million institution pays, on time and savings deposits, is higher than that paid by the smaller institutions. This is true pretty much whether you cut it and look at the Federal Reserve member banks—in '67 they paid .06 more; in '60, .03 more; a little more in '65—or whether you look at all insured commercial banks or insured commercial banks in Pennsylvania and New Jersey. The case for Pennsylvania and New Jersey, our statistics are broken out in 25 to 100 million, which might affect it somewhat, but in that case it is .13 more for Pennsylvania banks, the larger banks paying substantially [fol. 1468] more on time and savings deposits.

In terms of charges on loans, again I found no exception, the larger banks charge less.

If we look at Federal Reserve member banks in 1967, it is .13 less—less than 6-4/10 for the larger sized banks here and over 6-5/10 for the smaller size banks.

Then for all insured commercial banks it comes out—the same general magnitudes. Looking over this, 1960 the Federal Reserve member banks, one-tenth lower for the larger size banks. And that is the smallest I found. It runs up to almost three-tenths lower.

The loan deposit ratios are to me quite crucial. This registers the quantity of funds that is pumped back to meet the credit needs of the community, and it seems to me to be very vital, and in general again—well, not generally, in all cases that I was able to find the larger banks provide more in credit services for the available funds than do the smaller size banks, or would they collectively.

* * * *

[fol. 1469] Q Have you made any studies on the actual effects of mergers on rates and have you consulted these in your market analysis?

A There are a number of studies. I haven't done out the survey myself.

Q How would they apply to the particular merger?

A Well, there was one by the New York State Banking Department on the actual effects of mergers from 1951 to '61. And the Department concluded that in the vast majority of cases mergers were beneficial. And this was measured by the actual effect of mergers leading to lower rates on loans, in particular small business loans, higher rates on time and savings deposits, extended lending in terms of small business loans, extended maturities in terms of [fol. 1470] mortgages, auto loans and that sort of thing. These were generally corroborated by a study by Horvitz and Shell published in the National Banking Review in late 1964, again concluding that in these terms rates paid to time and savings depositors, rates charged on loans, and in terms of the extended maturities, et cetera, the public benefitted. It was rather interesting to know that Horvitz and Shell concluded that the major benefit was in terms of extended services. Although they did find higher rates on time and savings deposits actually paid as a result of the merger, that sort of thing.

* * * *

[fol. 1474] BY MR. WEINBAUM:

Q Can you tell us what the factual basis is for concluding that the relevant market is as you defined it?

A You want me to reiterate the whole record? I could do much of that.

Q No. I would like you to tell us what factors with regard to this specific case–

THE COURT: Just recite them in sort of one-two-three order, the factors that you gave consideration to in defining the relevant geographic market.

THE WITNESS: We have data as to the nature of the flow of customers that is taken by various financial institutions. We have data as to solicitation of various financial institutions in various areas. We have data as to the flow into and out of Bucks and Hunterdon Counties.

Q Do you have any specific data on where banking customers do do their business?

A I have a considerable amount of it, some of it conflicting, some of it distorted.

Yes. We have data in the record that people go to Easton from Phillipsburg area. They go to Allentown from the Phillipsburg area, that the Bethlehem bank comes in to solicit customers here. We have in your deposition, I believe, a Mr. Rhimer with considerable data as to the Riegelsville [fol. 1475] office of the Girard Trust.

DIRECT EXAMINATION (Continued)

BY MR. ROACHE:

Q I believe I can rephrase the question. In your performance studies have you come to any conclusion as to the anti-competitive results from this proposed merger?

A Yes, I have.

Q What are they?

A In my opinion I do not see any anti-competitive effects. It seems to me if you look at the nature of how banks in the area compete, the nature of the business that they face, that in context of the entire market, you are not eliminating any particular competitive factor. These banks have been–there is no conflict here. The banks have been more passive, and there are well established reasons that they must have been passive. There is a fantastic body of evidence that indicates that with larger size they are able to undertake the programs that they intend to undertake, the programs that would make them aggressive competitors, that would permit them to extend the force of their competitive

influence—and here I am talking about the magnitude in any one area.

* * * *

[fol. 1476] Q Do you believe, sir, that in assessing competition or the effects of competition in the market that you can rely solely on concentration ratios?

A Categorically, no. To start with, the concentration ratios say nothing unique. You take some number of firms, 1, 3, 5, 7 or 11, if you are inclined—whatever it is—some arbitrary number. You cut it off, but this doesn't tell [fol. 1477] you whether or not you have included all of the relevant competitors, and in this case whether or not you have defined the product market. If you look at commercial banking only rather than time and savings deposits you have excluded mutual savings banks which are not huge here, but come in from out of the area. You will have excluded savings and loan associations which do exist in the area, and one is most aggressive. You will have excluded your credit unions, and I would think also the government and its provision of savings.

THE COURT: Professor, if I understand you correctly, in substance you are saying that concentration alone cannot be considered. It must be considered in conjunction with the structure of the market and the product line and the competition as related to the product line?

THE WITNESS: Yes.

THE COURT: Is that a short answer?

THE WITNESS: It includes particular behavior also.

THE COURT: Do you disagree with my summation?

THE WITNESS: I don't disagree when you embellish it slightly.

THE COURT: Go ahead and embellish it.

A No. I think as I outlined just briefly, whether firms are inclined to take more risk or are inclined to cut [fol. 1478] back is very important in assessing what the structure means in terms of performance, and that is how you get from your structure to performance. That is the only embellishment.

CROSS-EXAMINATION

BY MR. WEINBAUM:

Q Professor Smith, did you find any interest rate ambiguity on passbook savings in this broad area that you studied, that is, in the actual Allentown-Bethlehem-Easton market?

A Would you clarify what you mean by "ambiguity"?

Q Did you find any difference in interest rates paid on passbook savings accounts?

A There are differences, yes.

* * * *

[fol.1479] Q And you would agree, would you not, that as far as concentration ratios are concerned, there are many people that would disagree with your view as to their significance?

THE COURT: The case law doesn't disagree.

Counsel, I just throw this out for what it is worth. Maybe my thinking is not proper, but it seems to me that it has been generally accepted that where there is great concentration a slight diminution could have anti-competitive effects, so you cannot speak of concentration in terms of generalities or percentages. It must be taken together. It must be considered together with all the other market factors revolving itself ultimately into a decision as to the extent to which the alternate consumer choices are diminished.

As to the law, do you disagree with that statement?

MR. WEINBAUM: Well, your Honor, I think the law has looked fairly consistently to concentration ratios.

[fol. 1480] THE COURT: It has been considered as a factor together with all other factors, and I think the Supreme Court has stated that you cannot decide that there is undue concentration purely on the basis of percentage of the market.

MR. WEINBAUM: Your Honor, I would have to disagree with your Honor on this point. I feel that the cases indicate that any sort of elaborate analysis, the details of the marketplace, must give way to these concentration ratios, and they have placed total emphasis, your Honor, on this factor.

THE COURT: Total emphasis?

MR. WEINBAUM: I would say essentially, your Honor, that the courts have tended to dispense with detailed analysis of evidence of behavior in the marketplace and relied on these ratios from which they conclude certain probabilities are likely to occur, because of these concentration ratios.

THE COURT: Well, I feel tentatively—and you will have full opportunity to argue this fact—concentration ratios are to be considered, but only in the context of the degree of control that a few may exercise over the market with the resultant effect of diminution of consumer choices, translated into a lessening of the competition.

[fol. 1481] Do you disagree with that?

MR. WEINBAUM: I would have to disagree with that.

THE COURT: All right. Right at this time I would rather get your position as to how the Court considers the matter of concentration and the factors that you would feel to be relevant in determining that there was such undue concentration that it would result ultimately in a potential lessening—a substantial lessening of competition.

MR. WEINBAUM: Your Honor, our position is that it is a statistical approach to the problem, your Honor, and that given certain percentage shares of a market this is enough, and that the probability that certain anti-competitive effects, substantial anti-competitive effects, are going to flow from this concentration of power is the test, without, as I say, going into these factors. These factors have been taken into account by economists, and the body of economic evidence indicates that market behavior is tied to market, the structure of the market, and certain consequences are likely to flow from these increases in concentration.

* * * *

[fol. 1482] HERBERT D. STEM, called by plaintiff in rebuttal, sworn.

DIRECT EXAMINATION

BY MR. WEINBAUM:

Q Mr. Stem, what is your occupation, please?

A President of the First National Bank of Milford.

Q And where is Milford located in relationship to Phillipsburg?

A Fourteen miles south.

Q How big is your bank?

A 1,100—oh, the bank—I beg your pardon. Twenty-four million.

Q Is that in assets?

[fol. 1483] A Yes, sir.

* * * *

THE COURT: How many branches do you have?

THE WITNESS: Two. The main office and one branch.

THE COURT: That is the one that you just mentioned, which is, you said, how many miles from Phillipsburg?

THE WITNESS: Fourteen from Phillipsburg.

[fol. 1484] THE COURT: Your main office is located approximately how far from Phillipsburg?

THE WITNESS: Fifteen miles.

* * * *

Q What is the lending limit of your bank?

[fol. 1485] A $126,000.

Q Do you get requests for loans in excess of this limit?

A Not very often.

Q Have you over the last two years had any request?

A Yes.

Q Do you recall how many?

A One.

Q And can you describe what type of a business it was which you got a request to participate in?

A A Ford dealer.

Q Located where?

A Frenchtown, three miles away.

Q For what purpose was this money to be used?

A To purchase cars, Fords.

Q For floor planning?

A Yes, sir.

Q Could you describe the manner in which this participation—did you handle a participation?

A Yes.

Q Can you describe the manner in which it was h
A You mean the payoff?
Q How the participation was arranged. ndled?
A How it was arranged?
[fol. 1486] Q Yes, sir.
A We applied to the Girard Trust. Is that what
Q Did they participate with you?
A Yes. They participated fifty-fifty. ou mean?
Q What was the total amount of the loan, appr
A I think it was $150,000. We don't have it n
been paid off two years ago. imately?
Q From your point of view was this paw. It has
satisfactory?
A Very. ticipation
Q Did the customer voice any dissatisfaction?
A No.
Q In the manner in which it was handled?
A No. He was very well pleased.

* * * *

[fol. 1487] THE WITNESS: Two years Ago.
THE COURT: We are not speaking about the same
MR. WEINBAUM: There was a loan. Mr. Stem h
which he couldn't accommodate. oan?
THE WITNESS: Without the Girard Trus a request
participation. We couldn't grant the loan. We need
from Girard Trust. without
Q Is this on the auto loan that you were speakin the help
A That is right. There was only one.
Q Was there any other loan request? of?
A No.
Q That you could not handle?
A No.
Q So this is the same?
A The one and only one.
Q The one and only request in excess?
A That is right.
Q Do you have a commercial lending specia
bank?
A No. t in your

Q Can you tell us whether you have any commercial lending activity?

A Yes.

Q Can you tell us, please, the manner in which [fol. 1488] commercial lending activity is handled at your bank?

A Who approves it, and so forth?

Q Yes, sir.

A It goes generally—first of all, to the executive vice-president, and then to the first vice-president, and then I get in the act, too, sometimes, so there are three, if it is of any size. They all have limits that they can loan without consulting me.

Q Limits with respect to their authority?

A That is right.

Q Which officers are responsible for obtaining this business?

A Responsible for obtaining? Oh, you mean, like solicitation?

Q Yes, sir.

A Well, that is done after hours. I don't mean to say that we go out and beat the bushes or go out every day, but since we had a new branch at Glen Gardner there has been some activity of going out and soliciting—not soliciting—making ourselves known, who you are, and whether or not we can help you, and are you satisfied, and so forth.

Q Do you do any mortgage business?

A Yes.

Q Do you have a fulltime mortgage officer?

A No.

[fol. 1489] Q Can you tell us the manner in which you obtain new business for your bank?

A Well, yes. First of all, we have no service charge. We open an account with a hundred dollars and if that—that opens an account, and if your account gets below one hundred dollars it is ten cents a check. As long as you don't get under the hundred dollars, there is no charge, and we charge for the checkbooks—we give it to the customer [fol. 1490] at cost, and if a new person comes into the community someone must—some of our employees, tellers, tell us that so-and-so and Mr. So-and-so and Mrs. So-and-so are new in our community. That teller might somehow get to them and offer our facilities, so we do solicit a little bit new people coming in, and they have been coming in in the last two years quite fast.

THE COURT: Mr. Stem, what is the area of your solicitation?

THE WITNESS: Area? Oh, three miles from home.

THE COURT: Are you limited to that?

THE WITNESS: No. This is not a rule or anything. It is somewhere in the community. You meet somebody, and maybe their wives meet on the golf course, and someone will tell them he met so-and-so. We don't go far from home.

THE COURT: As I understood your testimony before, Milford has a population of approximately 1,100. I am not familiar with the particular area, but I assume just from looking at a map that outside of the town of Milford the area is rural, is that correct?

THE WITNESS: Yes, that is correct. There are villages below there.

THE COURT: Do I understand that the area in which you solicit business is within a radius of three miles of your bank in this town of 1,100 people?

[fol. 1491] THE WITNESS: Yes. We never get in the neighboring town, which is Frenchtown, four miles away.

THE COURT: What is the area from which you derive your business in terms of radius?

THE WITNESS: What is the area?

THE COURT: Yes.

THE WITNESS: Well, the area belonging to Riegel Paper, and they own four farms, and it is a few miles outside of Milford. There is a golf course there and a swimming pool there, and they have been very active up to a year ago in new building, and they sell these lots very cheap, particularly if you are an employee of Riegel Paper. You buy a 200-foot lot by a hundred for seventy-five dollars. Now, Riegel has brought in forty, fifty, sixty, seventy families from—well, wherever they come from, other mills or the West, the South, and they also brought their accounting office from New York and put it in Milford. These people had to have a place to live, so outside of us that is where you might say what little solicitation there is takes place, to go up to these people that just arrived there and are working for Riegel.

THE COURT: Maybe I am drawing a fine distinction here, but I will repeat the question again. Do you have any idea of the business conducted by your bank—of [fol. 1492] the area from which it is drawn defined in terms of radial miles from your office?

THE WITNESS: How far do we get out from our office?

THE COURT: I am not speaking in terms of soliciting. You told me that you solicited within a radius of three miles of your office.

I am only wondering whether you have any substantial business that your bank handles beyond that radius of three miles.

THE WITNESS: No, no.

THE COURT: You do not?

THE WITNESS: This soliciting—I don't know how to define it any more than to say that some family will move in, particularly Riegel. They don't go out every afternoon—move into Riegel Ridge, and they are employees of Riegel, and naturally we are close to Riegel. In fact, they are one of our biggest depositors, and I know my office in Riegel—and so do the other officers, and they just go to make acquaintance and offer what we have to these people that just moved in Riegel Ridge, which is just a few miles from the Borough. They don't go to any industry.

I don't know how to explain it any better.

* * * *

[fol. 1493] Q Mr. Stem, when did you last hire a management trainee?

A A couple of years ago.

Q And may we ask how much it cost to hire this man, approximately?

A Well, he was a high school boy and he lived in Milford. He went in the Navy and finished his work, and I think we paid him $4,500 or $4,800. I can't remember.

Q And what is he making at the present time?

A $6,000.

Q Do you bring experienced management into your bank?

A No.

Q Where do you get your management from?

A Well, we screen them and either hire them or not hire them and we have eight—seven or eight AIB trainees. We have three men in Rutgers, Stonier Graduate School of Banking, so we hire our own and train them, educate them.

Q These eight, you say, are going to AIB?

A Eight of our employees—well, two graduated last week.

That is up at Lafayette. We educate them ourselves sooner than go out, and we think that we can do a better job. It works out all right for us.

[fol. 1494] Q Have you paid yearly cash dividends over the past five years?

A Yes.

Q And have you paid any stock dividends?

A Yes.

Q In how many instances have you declared a stock dividend?

A Once last year and once the year before, and I guess one a year and a half from now.

Q Have you had occasion over the past five years to increase the capital of your bank?

A Yes.

Q On how many occasions?

A Three.

Q And how was this capital raised?

A Oversubscribed.

Q How was it raised?

A Oh, how?

Q Yes. Did you issue new stock?

A We issued new stock, yes.

Q Can you approximate for us the total increase in your capitalization as a result of these three stock offerings?

A Well, I think it was around a hundred thousand each. The last one was $125,000, and can I speak in my own way of [fol. 1495] talking?

Q Yes.

A We were examined a week ago and due to the fact that our growth since January 1st has been four million and a half, the chief bank examiner said, "I am going to report that and recommend you raise your capital again," but we already had talked about that a couple of—three or four weeks ago.

Q You have grown four and a half million dollars since January 1st?

A That's right.

Q In deposits?

A That's right.

Q Is your area growing?

A Yes.

Q Do you believe on the basis of the way that you are conducting your banking business that you are adequately serving your community?

A I do. We have been told so by the examiner.

THE COURT: You didn't expect a different answer, did you?

MR. WEINBAUM: Not really, but we do feel it is pertinent.

THE COURT: I wonder if in any instance a bank president would come forth and say he didn't think his [fol. 1496] institution was adequately serving the community.

MR. WEINBAUM: I think there may be instances, your Honor, where there are some problems.

THE COURT: Such as would arise when a merger is being urged.

* * * *

Q Do you feel that as a small bank you have problems which would make it difficult for a bank to prosper?

A A bank, any bank to prosper? Any other bank to prosper?

Q Yes.

A Well, I think a lot of it is management. It is inside. I can have a bank like Milford and if I don't—I say "I", we can make it prosper, and we can make it just pay for itself, but we have got to put something in it to get something out of it. My men have been working hard for five years and showing the result in our growth.

Q Are you automated?

A No.

[fol. 1497] Q Do you have any plans to take advantage of automation?

A Yes. We have discussed that. We might farm it out, but not buy, not to buy automation.

Q Have you made any specific projection as far as farming it out?

A No. We are a little slow on that.

Q Would this be by going off premises with a correspondent bank?

A That is right.

THE COURT: Do you feel that automation has advantages?

THE WITNESS: For a large bank, but not for our bank. I think a lot of automation is required where you have help trouble. That will make you think and go to automation quicker than anything, but we have not had that. We have not had a girl leave us in five years, or a boy, either.

THE COURT: Did I understand you correctly before to say that you were thinking of farming it out?

THE WITNESS: Oh, yes. I called it farming out.

THE COURT: That is automation, isn't it?

THE WITNESS: Yes, but we would not go for automation. We would not have the machines there.

THE COURT: What are the advantages of automation [fol. 1498] to the extent that you feel you should have it in the farming it out?

THE WITNESS: You mean for us to have all the machinery?

THE COURT: No. You mentioned before that you were thinking of automation to a certain extent, and that you were thinking of farming it out. Referring to your thinking on this subject, what you plan, what were the advantages that you can see to be available from such farming out, as you would consider it?

THE WITNESS: Well, thinking about it, if this growth of ours were to continue, that is the reason we were thinking about farming it out, but it is not there yet. It is just talk. It is not today, tomorrow or next week.

Q Do you feel that it will–

A Eventually?

Q Do you feel that your farming out is going to result in cost savings to your bank?

A Well, we think the cost is coming down, too. That is one thing that we are hesitating on.

CROSS-EXAMINATION

BY MR. MEYNER:

Q Mr. Stem, how old are you?

A Seventy-four

* * * *

[fol. 1499] Q And isn't it true that you have been conducting a campaign to attract checking accounts?

[fol. 1500] A That is true.

Q And you have been advertising, have you not?

A Oh, we always did.

Q Has banking by mail increased with you?

A Very much.

Q And you are getting an increasing volume of business by mail?

A Yes.

Q I have here Exhibit D-51. You said you were familiar with your own advertising; are you not?

A Well, we have an advertising firm. I don't often see it. We have an assistant cashier taking care of advertising.

Q Do you recall an ad in the Easton Express which said "Don't let a few miles stand between us"?

A I might have, but I don't know.

[fol. 1501] Q Well, I show you Exhibit D-51.

A That's our ad, yes.

Q Do you still say you only want to do business about three miles away?

A (No response.)

Q Well, what do you mean by that?

A What I mean by that is that—I am not in the advertising. I am not the advertising man. We have a firm that puts these ads out, approved by the assistant cashier.

Q But as a result of advertising, such as this in the Easton Express, you are getting more deposits and business by mail?

A Sure.

Q So your area is larger than three miles, isn't it?

A Well, that part—in newspaper, it would have to be, yes. But when you make personal contact—I mean, of course, it is more by mail.

* * * *

Q Would you say these figures are correct with reference to the time you opened your branch, you had about 3.6 million in demand deposits, and eleven million eight in [fol. 1502] time deposits?

A I believe so, yes. I think so.

Q And the next year it increased from 4.6 and 14.1.

A Well, I am sitting here without anything to go by, Governor. I suppose so. I can't remember all those figures.

Q But you had a very strong growth since the establishment of the branch.

A Yes, that's right.

Q Do you have any idea how much of the increase is due to the branch?

A Well, percentagewise?

Q Yes.

A 70 per cent, 60 per cent.

* * * *

CROSS-EXAMINATION

BY MR. ROACHE:

Q Do you do floor planning?

A Yes.

Q Do you do floor planning for large appliance companies? [fol.1503] A No.

Q What floor planning do you do?

A Just for two automobile companies. One—I don't know whether we have any now or not. Might have a couple. Nothing but automobiles, Ford and Chevrolet.

MR. ROACHE: That's all.

CROSS-EXAMINATION

BY MR. SMITH:

* * * *

Q How far, by the way, is Riegelsville, New Jersey, from Milford?

A Seven, eight miles. To the Musconetcong Bridge.

Q Yes. And how about Riegel Ridge, how far is Riegel Ridge from Milford?

A Five miles, maybe six.

Q You are active in the lending on houses in Riegel Ridge, I believe?

A That's right.

* * * *

[fol. 1504] Q And as a result of that you had quite an increase in your saving accounts when you raised the rate to 4 from 3 percent, particularly your mail business increased, didn't it?

A I suppose so. I don't have all those details at hand.

Q Well, you got depositors from much further, a greater distance than three miles, didn't you, when you put on that advertising campaign?

A I suppose so, yes.

* * * *

[fol. 1505] Q Yes. Pohatcong Township?

A That's right.

Q That's right next to Phillipsburg, isn't it?

A Yes.

Q Now, you have a number of accounts in Pennsylvania, in Bucks County, do you not?

A Well, Upper Black Eddy in Riegelsville, yes. Earl Winter.

* * * *

[fol. 1507] CHARLES E. LANGNER, called as a witness by the plaintiff in rebuttal, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. AUSTIN:

Q Would you please give your address, sir?

A My home address?

Q Yes.

A R.D., Belvidere, New Jersey.

Q What is your present position?

A I am president of the First National Bank of Belvidere.

Q And how long have you been in that position?

A About three years now, I believe.

Q And how long have you been in commercial banking?

A Forty-one years.

Q Will you please give the total deposits of your bank as of year-end 1967?

A I believe the deposits were approximately $16 million.

Q Do you have any branch offices?
A No.
THE COURT: Did you say sixteen?
THE WITNESS: Sixteen million.

* * * *

[fol. 1508] Q How far is your bank from Phillipsburg, New Jersey?
A I would say it is from fourteen to fifteen miles.

* * * *

Q Would you please describe briefly the services offered by your bank.
A Well, our ads say complete banking facilities. So we try to do most all banking functions.
Q Would you enumerate just a few of them, please.
A Well, we make loans of all types, mortgages. We don't get a call for too many large commercial loans. We have installment loans, demand loans. Of course, we have savings accounts and commercial accounts, convenience accounts. There are many things we do that people don't even know we do, of course.
Q What was your lending limit as of year-end 1967?
A About $110,000.
Q Did you have occasion in either 1966 or 1967 to make use of the full amounts of your lending limits?
[fol. 1509] A Not in '66 or–

* * * *

[fol. 1511] Q Did you have occasion, Mr. Langner, during the year 1966 or 1967 to make use of the full amount of your lending limit on a particular loan?
A Not in '66 or '67. We did this year.
Q How often did you have occasion to use the full amount of the lending limit?
A Once.
Q And to whom did you lend that money?
A It was a church loan.
Q Was your lending limit sufficient to handle the total amount or did you participate it with another bank?
A No, we loaned the entire amount.

Q Have you during the past few years had requests for loans in excess of your lending limit which you have had to participate with other banks?

A No, we haven't.

Q Do you recall ever having been unable to satisfy a loan request because of your lending limit?

A No, sir; we haven't.

Q Do you offer trust services?

A No, sir; we do not.

Q Why do you not offer trust services?

A We have no trust powers from the Comptroller's office, for one reason.

Q Does your bank use electronic computers, either [fol. 1512] on premises or off premises?

A Not the EDP system, no. We have Postronic bookkeeping machines, that's all.

Q And how recently did you purchase that equipment?

A I just purchased a new piece two months ago, a new proof machine.

Q And this is what you would call semi-automated equipment?

A Well, you could say it is semi-automated, yes.

Q Do you have a full-time mortgage loan officer?

A No, we don't.

Q Who handles those loans at your bank?

A I guess—I do.

Q Do you have a full-time commercial and industrial loan officer at your bank?

A No, we do not.

Q Who handles that function?

A Well, I guess I do.

Q In what ways, briefly, Mr. Langner, do you feel that your bank is serving the needs of your immediate community?

A Well, we don't seem to have too many complaints.

* * * *

[fol. 1513] THE COURT: Do you solicit business?

THE WITNESS: Not actively, no, not from door to door. We advertise in the paper, over the radio.

THE COURT: Within what radius of your bank do you draw your business?

THE WITNESS: Well, I would say the outside would be fifteen miles.

* * * *

Q Would you be able to approximate, Mr. Langner, the percentage of the total amount of business your bank does in Belvidere, Belvidere proper?

A I would say about 50 per cent.

Q What would you then regard as your primary service area, where you do the vast bulk of your business?

[fol. 1514] A Well, there is an area—I would say if you draw a circle around us of about ten miles where we get our business from, really. Because we are a rural area. We only have 2,460 people in Belvidere, so we have to draw from outside that. It is an R.D. area, of course.

Q Would you be able to approximate the percentage of your total business that you derive from that ten-mile radius?

A Yes, probably 35 percent—30 to 35.

THE COURT: I would take it, on your approximations, that beyond the ten-mile radius, and within the extended area of five miles, you draw 15 per cent, approximately.

THE WITNESS: That's right. You see, Phillipsburg has an R.D. 1 and R.D. 2. Well, R.D. 2 runs within four miles of Belvidere. Now, of course, we overflow down to Harmony Hill, we call it. And, of course, we get a great deal of that business probably because people don't want to drive into the traffic, I don't know.

MR. AUSTIN: I think some clarification is in order here. He indicated that about 50 percent of his total business is derived from Belvidere.

THE COURT: 35 per cent from—

MR. AUSTIN: From the ten-mile radius.

[fol. 1515] THE COURT: The ten-mile radius outside of Belvidere. And he mentioned that he draws business from a fifteen-mile radius, so I assume that the other approximation of 15 per cent came within that area, beyond the ten-mile radius, up to the fifteen-mile radius.

If I haven't stated this testimony correctly, you can have the witness correct it.

* * * *

Q Mr. Langner, you indicated, I believe, that you draw approximately 50 per cent of your total business from Belvidere proper.

A That's right.

Q And in answer to the Court's question you indicated that you draw approximately 35 per cent of your total business from a ten-mile radius of Belvidere. Am I to understand that the third type would be from outside Belvidere and within the ten-mile radius, making 85 per cent of your business from the ten-mile radius.

A That's correct.

Q In your opinion, Mr. Langner, could your bank better serve the needs of your community, or the community you are now serving, if it were twice as large as it is right now?

* * * *

[fol. 1516] CROSS-EXAMINATION

BY MR. MEYNER:

Q Mr. Langner, you were about a $3.2 million bank in '57?

A That is correct.

Q And you are now an $18 million bank?

A That's right, yes.

Q And isn't the growth attributable to the fact that you were paying a higher interest rate in the Lehigh Valley than the Phillipsburg-Easton Banks?

A Yes.

Q And didn't you get a lot of deposits from Pennsylvania and New Jersey as a result of the increase of that rate?

A Yes, because they didn't see fit to raise their rates.

[fol. 1517] Q Pardon?

A They didn't see fit to raise their rates when we did.

Q And you got a lot of deposits from that area.

A That's right.

Q Isn't it true, also, that you only have about 28 per cent of your deposits in commercial and industrial, installment and mortgage loans?

A That's right.

Q And the other 72 per cent you invest?

A That's right.

Q You could go to Pennsylvania and you could go to

various parts of New Jersey if you aggressively wanted to seek deposits or loans, could you not?

A Deposits, I don't know whether we could or not. We seem to get all the loans we need to make a fair profit for a bank of our size.

Q You think 28 per cent of your total deposits is a satisfactory figure.

A I think 16 per cent on capital funds is a good earning ratio for a year.

Q How about farm loans?

A We have a few farm loans now. Not as many as before, because of the Farm Home Administration, whose office is right next door to our bank.

Q And they are an aggressive competitor?

[fol. 1518] A Well, I wouldn't say they are aggressive. They are very lenient.

Q This organization, a Federal Government organization, is giving better loans than you are willing to give?

A I don't know what context you mean by "better."

Q Well, they give larger amounts.

A Not larger amounts, but–

Q Better terms.

A Better terms. Seven years.

MR. MEYNER: That's all.

* * * *

[fol. 1519] REDIRECT EXAMINATION

BY MR. AUSTIN:

[fol. 1520] Q What is your present rate on passbook savings?

[fol. 1521] A 4 per cent on savings accounts, 5 per cent on CD's.

Q When did you raise your rate on savings accounts to its present level?

A January 1962.

Q And you have indicated that you drew essentially the amount of savings money from Warren County and Northampton County?

MR. MEYNER: New Jersey and Pennsylvania.

MR. AUSTIN: All right.

Q (Continuing.)–from throughout New Jersey and

Pennsylvania at the time that you raised your rate to 4 per cent, is that correct?

A That is correct, we do.

* * * *

[fol. 1542] JOHN W. RHEINER, JR., sworn.

DIRECT EXAMINATION

BY MR. AUSTIN:

(Exhibit G-88 marked for identification.)

Q Would you please give us your address, Mr. Rheiner?

A I live at 159 West Pennsylvania Avenue, in the Borough of Chalfonte, Bucks County, Pennsylvania.

Q What is your position in the Easton National?

A I serve as vice-president and cashier of the Easton National Trust Company in Pennsylvania.

* * * *

[fol. 1551] CROSS-EXAMINATION

BY MR. WATERS:

Q Mr. Rheimer, when you originally conducted this survey, as I understand it you obtained a percentage result outside the trading area of 3.3 per cent by dollar amount, and 4.4 per cent by number.

A I believe that is correct.

Q And the second time you took a random sample, a different random sample and your percentages are what, at this time on your second survey?

A The results of this survey combining both regular and checking accounts indicates that from our present number of 15,249 accounts, checking accounts that is, a total of 1,040 accounts or 6.82 per cents are represented from outside of the prescribed immediate service area.

* * * *

[fol. 1556] THE COURT: One of the basic problems here—I mention it is a basic problem because I think it is the beginning

point in the evaluation of the evidence—the determination of the relevant geographic area.

Now, Mr. Weinbaum, you had proposed two: Phillipsburg and environs; Phillipsburg-Easton and environs. It does occur to me that it could never possibly except the narrow area of Phillipsburg and environs in the light of all the testimony here. I am just wondering whether you still strongly urge that that is an appropriate geographic area.

MR. WEINBAUM: Your Honor, we will emphasize the Phillipsburg-Easton area in our presentation to you, if I can answer the question in that way.

THE COURT: Then I think you indicate that you are going to forget about the Phillipsburg and environs.

MR. WEINBAUM: We may not forget it totally, but we are going to emphasize Phillipsburg-Easton.

* * * *

[fol. 1557] THE COURT: Well, there are other very significant factors to be given consideration as to the competitive position. I have indicated before that I will give great consideration to the relative ease of access, the commuting distance and the commuting time. I think I indicated during the trial, and I am very certain that—take on time deposits—that by merely spending an extra eight, ten or fifteen minutes on the road to open up an account a depositor could get a substantially higher rate of interest, I am sure he would do it, all other things being equal.

Defendants are urged that the SMSA is the appropriate area.

I will say now, counsel—addressing myself to counsel for the Government—at the moment I am inclined to agree—again emphasizing those factors [fol. 1558] of proximity of the competitors, and the relative ease of access to the facilities offered within that area, and, of course, considering also the interchange of activity, the mobility of population.

Here is something else I will throw out for consideration. My overall feeling here at the conclusion of all of the presentation of evidence is that we have two small banks. There are a number of substantial competitors, much larger in size—that is, if I adopt the SMSA area. There has been testimony—though I don't think too much of it; I am not even sure whether there was testimony from more than one witness, I think one, to the effect that this merger might have adverse effects, I think it was the Phillipsburg Trust Company, but maybe I am in error—but,

in any event, Section 7 of the Clayton Act protects competition, not competitors. So I don't think I should be concerned—leaving the door open, of course, for counsel to convince me to the contrary—with the effect upon any competitor that may be smaller in size than the resulting bank. I don't think that that is particularly relevant. The remaining competition, or the nature of the competition still existing in the field after the merger is the important thing.

My tentative conclusion is that if I adopt the [fol. 1559] SMSA geographic area, I would have very little basis upon which to find anti-competitive effects by the merger of these two small banks.

Do you have any comment on that at this time? You don't have to, Mr. Weinbaum. I am only throwing these things out for you to think about.

MR. WEINBAUM: I have no comment, your Honor.

THE COURT: All right.

We seem to have a little disagreement as far as concentration is concerned. Here again if the larger area is the relevant geographic area, it is very difficult for me to reach a conclusion that there is any undue concentration. If we were to take Phillipsburg and environs, it would be a radically different picture, modified to an extent, if we took Phillipsburg-Easton and environs. But there in much lesser degree.

When you brief this, I would like you to point out in what particular area, or the relevant line of commerce, this alleged anti-competitive effect is to be felt. I am not dealing here with the run-of-the-mill antitrust actions. Here we have got so much overlapping of activity within the relevant line of commerce that there may be room for argument that in some areas of it there is no anti-competitive effect [fol. 1560] and in others it may be felt, if there be any.

It also occurred to me as I was going along here that there doesn't seem to be, up to this point, any substantial aggressive competition heretofore existing up in Warren County and the surrounding areas. Pro-competitive effect could probably result from stimulating aggression. And that, it seems to me, could be stimulated if small banks were placed in a position where they would not only have the finances but the staff to go out and press for business.

I will conclude by saying I feel that any concentration must necessarily be considered with the degree of competition existing as well as the probability of potential competition.

* * * *

[fol. 1561] THE COURT: That doesn't sound unreasonable. Also, I might mention parenthetically here, that I feel that state law governing branching could play a very significant part in the decision, that if any action is taken by the Legislature to modify the existing law, that I would consider.

MR. MEYNER: From my following that very proposed legislation, there ought to be action no later than November 21st. I think they come back on [fol. 1562] the 17th and it is pretty much yes or no at that time.

THE COURT: Well, I haven't seen the proposed legislation. But my feeling at this time is that if branching is permitted outside the county, you could very well then have large banks in Essex County compete with the banks in Warren County. And it seems if that situation developed, there would be absolutely no merit to the contention that there was a substantial lessening of competition by the merger of these two small banks.

* * * *

THE COURT: I want to apologize to counsel if at sometime I have seemed a little impatient. Of course, I didn't mean to be impatient with counsel, but I was trying on the one hand to move this as expeditiously as consistent with full opportunity to present the case, and, on the other hand, trying to [fol. 1563] avoid a monstrosity of a record which contains voluminous material that would be of no particular value. Of course, where the line is to be drawn is hard to determine, and I suppose my expressions were a bit on the biased side as I was trying to hasten this along. And if I indicated any criticism of counsel, I didn't intend it, and I apologize.

My overall feeling is that the clients here—the Government on the one hand, the banks on the other—have been very well, exceptionally well represented, with competence and the zeal that a client has a right to expect from counsel.

My concluding statement is: I think you have done an excellent job in bringing to attention all facets of this litigation. And I hope in due course I can do my job as well as counsel have done theirs.

MR. WEINBAUM: Thank you, your Honor.

THE COURT: All right. We made our time schedule.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil No. 56-68

TRANSCRIPT OF MOTION

UNITED STATES OF AMERICA

v.

THE PHILLIPSBURG NATIONAL BANK and TRUST COMPANY, et als.

Newark, New Jersey,
October 14, 1969.

MOTION TO SET EXPIRATION DATE FOR STATUTORY STAY

Before: The Honorable ROBERT SHAW, U. S. D. J.

Appearances:

MEYNER & WILEY,
Attorneys for Phillipsburg National Bank & Trust Company,
By: THOMAS D. HOGAN, Esq.

CARPENTER, BENNETT & MORRISSEY,
Attorneys for Second National Bank,
By: MICHAEL S. WATERS, Esq.

PHILIP L. ROACHE, JR., Esq.,
Attorney for the Comptroller of the Currency.

ALAN MALASKY, Esq., Department of Justice, Antitrust Division.

[fol. 5] MR. ROACHE: Now, it is clearly recognized that when a plaintiff or any person seeks an injunction from the Court that under most circumstances one must show a reasonable probability that they will be successful at the trial. We have gone through the trial of this case, your Honor, and the case has [fol. 6] been decided in behalf of the defendants, so it doesn't seem likely that the Court could hold us to reasonable probability that the plaintiff will be successful on an appeal; plus there is an additional factor that this Court should consider on whether or not the injunction should be lifted, which bears on the fact of whether or not there would be reasonable probability of success, and that is the changing picture in the New Jersey banking structure. That has changed so much since this case was started and terminated that I feel, your Honor, that I should put in some documents on this point so the Court could be well advised as to what the present situation is in the New Jersey banking picture. I have some documents here that I have submitted to the plaintiff. I admit it has been late, and I don't intend to say that he has had ample time to really examine the figures. I have given the source material on these documents, and I have a witness in the courtroom, the Administrative Assistant for the Regional Comptroller for this Region, who prepared the documents, to testify as to how he prepared them and what they represent, unless the plaintiff is willing to let these documents go into evidence without calling the witness to the stand.

* * * *

[fol. 8] THE COURT: Why do you need sixty days to decide whether you are going to take an appeal? I am not thinking in terms of the time that you are allowed to file an appeal, but why do you need that time? Why can't you make a decision quickly? I know that things run slowly in the Department of Justice. [fol. 9] I have encountered that before but the banks here, too, I assume, have a problem. You can't leave these things in limbo indefinitely.

MR. MALASKY: May I respond to that, your Honor, by saying that we feel that the Houston case is clear on this matter of lifting the stay. We would say that absent some sort of compelling showing of perhaps something like an imminent failure of one of the banks, or something, we feel that this motion—this stay should not be lifted until we have had an

opportunity to analyze in full detail whether or not we should take an appeal.

THE COURT: Do you need sixty days?

MR. MALASKY: I would say we do, your Honor. These decisions to take an appeal we consider very serious matters, both from spending the money of the government as well as whether or not the case merits an appeal, and we like to give every opportunity and every possible examination of the facts of the case as viewed by the Court and other circumstances which may have developed, and therefore we would prefer that we would not be put in a position where we had to make a decision any sooner than that.

* * * *

[fol. 10] THE COURT: But we have reached a point of decision in this case where I am not going to suggest any reargument, except to say this that as I went through this record and the exhibits and considered the size of these banks I reached the conclusion that it taxes the imagination even to conceive anti-competitive effects. Then we had a development after the trial that I think has considerable merit in the case as far as any anti-competitive finding. I think you could put your finger on a number of localities up in Warren County where banks like the First National State or Fidelity Union [fol. 11] can branch. It would't surprise me with the rapid growth in that area, which wasn't disputed by the government, that many a large city bank were reaching out to get locations in there.

MR. MALASKY: Your Honor, these are precisely the type of facts that we must consider during this period of time after the entry of judgment, as to whether or not we would file an appeal in this case.

MR. ROACHE: This is the type of documentation I have to show the changes and what banks have attempted to reach out and come into the area. For instance, if I may, your Honor, the National Newark & Essex Bank, a 676 million dollar bank, is merging with the Washington Trust Company, coming into Warren County, and the Trust Company National Bank of Morristown, a 182 million dollar bank, has applied for a bank in Harmon Township, which is right outside Phillipsburg.

THE COURT: Mr. Roache, what you are suggesting is that you supplement the previous record.

MR. ROACHE: No, I am putting this in on the motion, on

the motion to show that, because to get an injunction you have to show that there is reasonable probability of success. These documents will show that in addition to what we already have on the record that the banking structure has changed so much that there is even less likelihood.

[fol. 12] THE COURT: Mr. Roache, I would never be rash enough to forecast an appellate decision, and particularly in a bank merger case. Stated frankly and candidly, it does seem that for some reason or other that bank mergers are not favored. I approached this from the standpoint that I was to be guided by the mandate of Congress not only in Section 7 of the Clayton Act, but the Bank Merger Act of 1966, as interpreted, of course, by our appellate courts, but I didn't approach it from the standpoint, as I indicated in my opinion, that the mere fact of merger of two banks in and of itself supports a presumptive inference of anti-competitive effect.

If you want to supplement the record, I am not prepared to spend the time with you today for that. I am inclined to allow a period of time for the Department of Justice to decide what it wishes to do. I don't think that sixty days is necessary. Mr. Malasky, I have had this problem in many forms involving the functioning of the Department of Justice. With all due respect, and regardless of what administration was in office, it seems that things move very, very slowly in the matter of making decisions. I have had that particularly in tax cases.

MR. MALASKY: Of course, in this situation we are limited by the Rules as to the amount of time that we have, so that—Iwould urge—

THE COURT: I appreciate that in a case of this kind [fol. 13] you have policy considerations.

* * * *

[fol. 14] MR. MALASKY: If I may respond to that, the first point [fol. 15] I would like to make is that I think it is a little late in the day to call this a frivolous complaint, but the reason that that language was probably used by the Court there was that in legislative history the House amended the Senate language. The Senate language originally was that the merger should not be consummated until after the termination of the antitrust suit, and the reason the House changed that and said "Unless the Court should otherwise specifically order" was the fear that the Department of Justice might attempt to exercise

the veto power and file frivolous or "mimeographed" complaints. It was with this type of frivolous complaint that they feared that we would try to exercise a veto power–

THE COURT: That is an interesting subject. I haven't witnessed that in antitrust suits, but I had occasion to remark not too long ago that it seemed to me that in different types of litigation initiated by the government that I was getting form complaints, and this disturbed me. It didn't disturb me too much until I started getting form briefs, and I did ask one of the gentlemen of the Department of Justice where they went in the cubbyhole to pull that one out. I pointed out to him that many of the cases cited in the brief had absolutely nothing to do with the particular litigation before me. They did bear upon the general subject matter, and after I had seen two or three similar situations I suggested that in the future that type of brief [fol. 16] would be suppressed.

MR. MALASKY: That wasn't the case here.

THE COURT: I am not directing my remarks to this case, but when you protested so violently about the government not using mimeographed forms it brought to mind instances where I had grounds for strong suspicion that there was such a practice in certain areas.

MR. MALASKY: I can certainly assure the Court that in these cases that is not the situation.

THE COURT: Let me get by this matter of further evidence. Mr. Roache, if you have evidence bearing directly upon the effect of the New Jersey statute on branch banks I think it pertinent to be considered in connection with this opinion because I have in the course of writing this opinion, as you may have notice, indicated that it appears that there are many locations for branch banks up there and even new banks, so it might serve two purposes. If you want to supplement the present record in support of that argument as to absence of anti-competitive practice, I would be inclined to let you do it, and also on the matter of a stay, but I can't do it today.

MR. ROACHE: I thought that by putting it in–it is legitimate and proper to put it in on such a motion, and I thought by putting it in on the motion it does become a part of the record for all purposes even including appeal purposes.

[fol. 17] THE COURT: I think you will have no problem. I will be quite willing to open the record to permit you to supplement it.

MR. MALASKY: We don't deny the changes that have taken place in New Jersey.

THE COURT: I don't have the slightest idea, Mr. Malasky, what he has to offer.

MR. MALASKY: What I was going to say is I don't really see the relevance of this particular material.

THE COURT: Where does your witness come from?

MR. ROACHE: He is the Administrative Assistant in the New York Regional Office of the Comptroller of the Currency.

THE COURT: He is readily available, isn't he?

MR. ROACHE: Yes, your Honor.

THE COURT: How about next Monday morning?

MR. ROACHE: That is all right with me, your Honor. That would be perfect.

THE COURT: I will give further consideration to this in the meantime. Until further order of the Court, the stay is in effect.

* * * *

[fol. 18] THE COURT: It is ordered that until further order of this Court the Consummation of the merger is stayed, and I will hear counsel next Monday morning and afford opportunity then to put in—for counsel on either side to put in any further evidence that is desired in connection with the stay or the effect of the New Jersey statute.

* * * *

MR. ROACHE: Let me correct a statement. The purpose of the witness was only to authenticate the documents and to tell why they were prepared. It is not real testimony.

THE COURT: Is authenticity disputed?

MR. MALASKY: We have not had a chance to verify the figures.

THE COURT: Will you do this after you have had an opportunity to verify—and I presume that between now and next Monday is ample time—would you please communicate [fol. 19] with Mr. Roache and advise him whether it is necessary to bring a witness in here to authenticate the documents? If authenticity is not disputed, I don't see any reason why a witness should be brought here.

All right, counsel, and then, of course, the order for entry of judgment will be withheld. Bring it over on Monday and I will decide the matter of the stay then.

MR. ROACHE: Thank you, your Honor.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil No. 56-68

TRANSCRIPT OF MOTION

UNITED STATES OF AMERICA

v.

THE PHILLIPSBURG NATIONAL
BANK AND TRUST CO., et al,

Defendants.

Newark, New Jersey,
October 20, 1969.

CONTINUED MOTION TO SET EXPIRATION DATE FOR STATUTORY STAY

Before: The Honorable Robert Shaw, U.S.D.J.

Appearances:

MEYNER & WILEY,
Attorneys for Phillipsburg National Bank & Trust Co.,
By: THOMAS D. HOGAN, Esq.

CARPENTER, BENNETT & MORRISSEY,
Attorneys for Second National Bank,
By: MICHAEL S. WATERS, Esq.

PHILIP L. ROACHE, JR., Esq.,
Representing the Comptroller of the Currency.

ALAN MALASKY, Esq., and JOHN CLARK, Esq., both of the Department of Justice, Antitrust Division.

[fol. 2] THE COURT: Mr. Roache, you had mentioned that you have some material you wanted marked in evidence.

MR. ROACHE: Yes, your Honor.

THE COURT: Has there been agreement as to authenticity?

MR. ROACHE: I don't know whether there is agreement. The Department of Justice reviewed our files last Friday in New York and I made corrections on the documents according to the problems that they had. Some of these corrections are in ink, your Honor, on the documents, and I didn't have time to do anything on them. We worked on them Saturday morning. If your Honor will accept them in that condition, I would like to submit them, if there is no objection.

MR. MALASKY: I would like to make a statement with regard to this, if I might. First of all, I would like to introduce to the Court Mr. John Clark. Mr. Clark is a member of the Indiana Bar, and with your permission he will be co-counsel in this proceeding.

THE COURT: Permission granted. Welcome to the Bar of this Court.

MR. CLARK: Thank you, your Honor.

MR. MALASKY: Your Honor, we would like an opportunity during this proceeding to complete our argument on the motion concerning the statutory stay. However, last week [fol. 3] as intervenor Mr. Roache had mentioned some documents relating to the effect of the revised Branch Banking statute in New Jersey were sought to be introduced. We had objected because we had not had time to consider them, and they were not received at that time.

Pursuant to the Court's instructions we have made diligent efforts to examine these documents and abstracted the same. In examining them we found certain mistakes and internal inconsistencies, as well as the fact certain denials of branch bank application filings were not indicated, nor were the reasons for such denials given.

In the light of these findings we felt obliged to send two of our attorneys to New York to the office of the Regional Administrator of National Banks to examine the underlying data. These errors plus several other errors were then found and confirmed. We then met on Saturday with Mr. Roache and we have now agreed to stipulate the accuracy of the documents as corrected by the testimony of the witness that Mr. Roache indicated he would call today.

However, your Honor, we would at this time like to reaffirm our position that these documents are not relevant with respect to the issue of whether or not the stay should be lifted, since we don't feel that they are germane to this question.

Your Honor, in considering the documents, and in the [fol. 4] light of the careful reading of this Court's opinion as to the importance of the revised New Jersey branching statute, as well as the position we have taken in our post-trial brief concerning less anti-competitive alternatives, we feel that these documents are relevant to the more important question involving the Court's decision on the merits herein. Therefore, your Honor, in accordance with your suggestion at the conclusion of last week's hearing, we would like today to have the record reopened to receive into evidence the documents prepared by the intervenor which relate to the Court's opinion with respect to the effect of the revised New Jersey branching law and the opportunities which it created for de novo branching and mergers. Such reopening of the record, your Honor, would be for the limited purpose of demonstrating through evidence that the opportunities for de novo branching are drastically limited, and that the revised New Jersey branching law created the opportunity in accordance with the Supreme Court's opinion in U. S. v. Third National Bank of Nashville, by which the asserted needs and convenience of the community could be satisfied by far lesser anti-competitive alternatives than the merger of the two defendants herein.

In an effort to expedite this matter we have prepared a motion under Rule 52(b) and 59(a) of the Federal Rules of [fol. 5] Civil Procedure, which moves as follows:

"1. To direct the reopening of the record herein for the limited purpose of admitting into evidence facts related to commercial bank merger and branching activity within the First Banking District of New Jersey following the enactment of Pamphlet Law 1968, Chapter 415, N.J.S.A. 17:9A-19, approved January 17, 1969, and effective July 17, 1969, and

"2. To amend the findings of fact and conclusions of law as set forth in the decision and opinion of this Court filed herein and dated October 14, 1969, to conform with the aforementioned facts relating to commercial bank merger and branching activity within the First Banking District of New Jersey."

Now, your Honor, the defendants' counsel and the intervenor's counsel have been given copies of this motion, and we ask leave of the Court to present the motion at this time.

MR. ROACHE: We object to the motion being filed We don't think that the record should be reopened. I think the documents and their documentation that is connected with this particular motion can be submitted on their original motion to lift the stay, your Honor, and this is all we are addressing ourselves to.

THE COURT: I made reference to the statute in connection [fol. 6] with the ease of entry into the market and, of course, I don't know, Mr. Roache, what your evidence is, but if I reopen I am not inclined to reopen with limitations that it can be used for this purpose and not for that purpose. That doesn't make sense. If the evidence is to be made part of the record, I want it to be part of the case for all purposes.

Now, if you don't want to offer anything you don't have to, but if you want to offer evidence I am going to make it part of the entire record.

MR. MALASKY: That is certainly agreeable with us, your Honor.

MR. ROACHE: I want to point out that the documentation that they have in connection with this motion is conclusionary in effect, your Honor. All their material thereon, their documents, is material that is already in the record, your Honor.

THE COURT: Well, I followed the reading of this motion, but I indicated that I am not inclined to limit the purpose for which any evidence can be used. There would be no limitation regardless of what you recite in the notice of motion. I don't think the motion is necessary. The order upon the record that leave be granted to present further evidence is sufficient.

MR. MALASKY: I would suggest at this time that we [fol. 7] could proceed.

MR. ROACHE: I would just as soon, your Honor, put the documentation in. Unless there is some serious objection to the documentation as corrected, I would just put the documentation in.

MR. MALASKY: It was our understanding that Mr. Roache was going to call a witness since there were certain corrections

on the documents that were made in ink. We didn't have time to retype them, but there was also the matter that some of the information that is brought out in the documents does not relate to denials of applications, and it was our understanding that Mr. Roache would put the witness on and we would have the opportunity to cross-examine him as to the denials. We are perfectly willing to let the documents go in, but we would like to call the witness to establish that certain denials of de novo applications occurred.

THE COURT: You can let the documents go in, and there is nothing to prevent you from calling a witness, if you want. The witnesses are not the property of any one. If they are going in evidence, just mark them in evidence.

(Exhibit GI-30 was marked in evidence.)

THE COURT: As I understand the situation there is no objection as long as the right is afforded to examine [fol. 8] the witness while he is here in court with respect to modifications in the originals.

MR. MALASKY: That is correct.

MR. ROACHE: Yes.

MR. MALASKY: May we have just a moment to examine the documents?

THE COURT: I have something I should take a few minutes out to do, anyway. About ten minutes?

MR. MALASKY: That would be sufficient.

THE COURT: All right, go ahead.

(Brief recess.)

MR. ROACHE: I neglected to offer a map that I had prepared. I will offer that.

(Exhibit GI-31 was marked in evidence.)

MR. ROACHE: Are these in evidence now?

THE COURT: They have been so marked, and according to the stipulation they are in evidence.

MR. ROACHE: All right.

* * * *

[fol. 9] WILLIAM J. LONGUA, sworn.

DIRECT EXAMINATION

BY MR. MALASKY:

Q Will you state your name and address, please?

A William J. Longua, 384 Main Avenue, Woodridge, New Jersey.

Q And your occupation, Mr. Longua?

A I am Administrative Assistant to the Regional Administrator of the National Banks in the Second National Bank Region.

Q Mr. Longua, I show you a document entitled "Warren County, New Jersey, Existing Banks and Branches, Proposed New Branches and Proposed New Mergers," and I refer you specifically to the pending application in Franklin Township of the Phillipsburg Trust Company National Association. Mr. Longua, do you recall if there was ever a denial of that application?

A Yes. That was denied. I don't remember the date, early in 1969. They have since requested reconsideration which is now pending.

Q Do you know the reason for that denial?

MR. ROACHE: Objection, your Honor. That is confidential information. That has nothing whatsoever to do with this case, whether it was denied.

MR. MALASKY: Your Honor, we think that the reason [fol. 10] for denial is perhaps relevant in that it may show that the area involved may not support a bank, a branch bank, for one or another reason like that. We think it is highly relevant to this matter.

MR. ROACHE: The only information that Mr. Longua has is the recommendation that the Regional Comptroller's Office made to the Regional Comptroller, and then there were other considerations by other people in the Washington office, and that is an intraoffice communication, and it is confidential and it is not to be divulged.

My point is, your Honor, it wasn't denied by his office but by the Washington office. So he really had no information, basic information, why they denied it. All he knows is what they communicated to the Washington office, and that has always been held to be confidential information.

THE COURT: What about that, counsel? From what I have heard I gather it is interoffice communication.

MR. MALASKY: Your Honor, we feel it is highly relevant in this proceeding as to whether or not when there were applications if there were denials what the reasons were, because the reasons may have been that the area was not able to

support a bank, and it would probably indicate even if there was another application that perhaps it also would be denied.

[fol. 11] THE COURT: I am wondering just how relevant a denial is.

MR. WATERS: I wonder if I might add one more point. The motion to open the record goes to branching activity after the new banking statute came into effect, and the denial that he is addressing himself to now in this testimony goes back to January of this year, before the new statute. Really, the only thing that would be relevant to the motion that is before the Court now is the present application for this branch.

MR. MALASKY: We do think that these denials are relevant lest these documents tend to mislead. Just showing an application for a reconsideration doesn't give the full picture of what has occurred in the past, which we think is relevant. Of course, this was an application of the Phillipsburg Trust Company which could have made this application prior to the new law, anyhow.

THE COURT: I have had cases before involving approval of branch banks, and, frankly, there are instances where I was puzzled with denials when taken side by side with approvals. There was so much of the personal element that seems to enter into this in evaluating the wisdom of permitting another bank to go into competition.

MR. MALASKY: Excuse me. If I may point out that this denial occurred on April 29, 1969, which was after [fol. 12] the passage of the new law.

THE COURT: What is the population of Franklin Township?

MR. MALASKY: As of July 1968 the population of Franklin Township–

MR. ROACHE: 1,950.

MR. MALASKY: That is right, 1,950.

THE COURT: Well, I will overrule the objection, and to the extent I give further thought on this and if I reach the con- on that the evidence is not relevant it won't be re- ed. I was disturbed to an extent about the confidential a of it, but this portion of the record can be kept closed a[illegible] for appellate purposes, so protection can be afforded against any detriment to the public interest by disclosure.

* * * *

MR. ROACHE: May I ask him to clarify the question, [fol.

13] too? Does he mean the ultimate reason why it was denied?

Q The question is do you have knowledge of the reason that the application for the branch office in Franklin Township by the Phillipsburg Trust Company was denied?

A I really have no way of knowing why the Comptroller's Office denied it. Our office makes a recommendation. Maybe if I explained our procedures—when we have a branch application made we assign it to a field examiner. He goes out and makes an investigation of all the factors involved, and he makes a recommendation. Our office reviews his report together with the information submitted by the bank, and we make a recommendation to Washington. The report is then forwarded to Washington with the supporting information and the Comptroller makes a final decision. They are not always the same.

Q Do you know if in this case they were the same?

A The final decision?

Q That is right.

A I can say they were the same. As I said before, I am not sure why the Comptroller denied the application.

Q Were the reasons given?

A We don't get a copy of the Comptroller's decision other than it is denied or approved.

Q Is there any formal opinion rendered in these cases by the Comptroller?

[fol. 14] A I don't believe so. I have never seen one.

Q Have you ever seen a reason for the denial of this application?

A By the Comptroller's Office, no.

Q Are you familiar with any of the reasons for which it may have been denied?

THE COURT: Let's not get into the area of conjecture.

MR. MALASKY: I am just trying to find out if he has any knowledge.

THE COURT: He said he didn't.

Q Mr. Longua, I refer you now to the document entitled "Branch Applications Filed in New Jersey in 1968," and I specifically refer you to Hunterdon County, and ask you whether you are familiar with a bank application by the Citizens National of Bloomsbury, an application filed for Hampton? Little York.

A Vaguely. I don't remember much about it. We have a number of applications. I can't remember.

Q Do you recall that that application was denied?

A Not offhand. If you say so. Your men were looking at our records.

Q Do you recall a meeting at your office last week with Mr. Yetter and Mr. Clark of my Division?

A Yes.

[fol. 15] Q Do you recall having gone over various denials that were pointed out at the time?

A Not specifically denials. I don't recall.

Q Perhaps if I can refresh your recollection, it is my understanding that there was an application filed by the Citizens–

THE COURT: Wait a minute, counsel. If he has any material that he has prepared that he wishes to use to refresh his recollection, I will permit him to do so, but I am not going to permit you to tell him what you believe occurred for the purposes of refreshing his recollection.

Q Do you have any information with which you could refresh your recollection?

A I am not sure this will appear in here because this is basically 1969 transactions.

Q This denial occurred in 1969.

A No, it wouldn't appear in there.

Q You have no recollection, therefore, if the denial or the reason therefor?

A I believe it was denied, but I don't really recall it specifically.

Q All right. Fine.

Now, I also show you a document entitled "1969 New Jersey Commercial Bank Branch Applications as of September 19, 1969," and I refer you to that portion of the document [fol. 16] concerning Hunterdon County, New Jersey, in which it was indicated that there were–excuse me–yes, in which it is indicated there were three filings in 1969 in Hunterdon County, and I ask you on the basis of this information here if you recall a denial in Hunterdon County in 1969?

A Yes, on an application of Citizens National Bank of Bloomsbury for Hampton Borough. It was denied in August of 1969.

Q Will you please tell the Court when the application was made?

A April 18, 1969.

Q With respect to that denial may I ask you if you have any knowledge of the reasons for the denial?

A I don't recall the reasons for our recommendations.

MR. MALASKY: That's all the questions I have.

THE COURT: Mr. Roache, do you have any questions?

MR. ROACHE: I have no questions, your Honor.

THE COURT: You are excused. (Witness excused.)

Before we get back to the main subject, I have not seen the exhibits, but so far as the testimony goes I don't consider that very helpful, but it might be in conjunction with the exhibits. May I have the exhibits for a moment?

(Court examines exhibits.)

All right, counsel, if you have anything further to [fol. 17] say I will hear you.

MR. MALASKY: We have no further witnesses. However, we do have two documents which we have prepared, one of which shows the branching status in communities within the Court's geographic market, and the other the branching status in communities in Warren and Hunterdon Counties of New Jersey outside the Court's geographic area. We think these documents will clearly show the towns in Warren and Hunterdon Counties which are open to de novo branching and those which are closed. I might also point out that the ones we have shown as being within the Court's geographic market, of course, also include the five towns that we originally urged and argued. I would offer these into evidence at this time.

THE COURT: Any objection?

MR. ROACHE: I don't think that we can stipulate to these, your Honor, because on the right-hand column it says "Branch Status, 'Closed' or 'Open'." This is a legal conclusion, and these conclusions are not accurate. There are some open that they have as closed.

THE COURT: Well, we are taking our population figures from the 1960 census. Whether a community is open or closed may depend to a large degree on what the 1970 census shows. From the record it appears that there has been a very substantial increase of population in most of the communities. [fol. 18] MR. ROACHE: If I might point out—

THE COURT: Go ahead.

MR. ROACHE: If I might point out, they have Mansfield Township and Washington Township each listed as closed on the basis that there has been an approval for branch offices.

There has been approval but that is still open until these people open up a branch office.

THE COURT: It also depends upon the population. If the population exceeds 7,500, despite the fact that there is a branch office there, it is still open.

MR. ROACHE: That is right. These are lower than 7,500. The point I make is these are still open. Though a bank may be given approval for a branch they may have never opened that branch, and as long as a branch is not open it is still territory for someone else to come up and open a branch.

THE COURT: A branch exists only when it has been established, and the case law is to the effect that it is established when it goes into operation.

MR. MALASKY: May I say, your Honor–

THE COURT: That is the reason, I presume, that we get so many branch offices opening and failing.

MR. MALASKY: May I say, these documents were derived from the information, especially the last one entitled–

[fol. 19] MR. ROACHE: This is the point that I am making, the conclusion they are making is inaccurate–

MR. MALASKY: –derived from intervenor's document entitled "Commercial Banking Facilities by Communities, 1/1/1969" and "New Branch Approvals 1/1/69 to 10/1/69." However, we do feel these documents will enable the Court to look–and we think that they are relevant, but at least for the Court to look and determine the population as estimated for July 1968, and it will show those towns which are open.

THE COURT: I will overrule the objection and receive them for whatever they may be worth.

(Exhibits G-89 and G-90 were marked in evidence.)

THE COURT: I think as I said during the course of trial it is better practice in a non-jury trial to resolve doubt in favor of the admission of evidence, because if it is excluded it is never available. If the Court erred in excluding it, the opposing side is deprived of the opportunity to argue the matter on the record in the appellate court. Also, as far as the District Court is concerned when I sit down back in Chambers and deliberate on the relevance I may reach a determination that it should be considered or I should not consider it at all because it is not relevant. I will admit the exhibits.

MR. MALASKY: Are they in evidence?

[fol. 20] THE COURT: They have been marked, yes.

MR. MALASKY: If the Court will allow, I would like at this time to make a few comments on the documents, if it is permissible.

THE COURT: They are in evidence. You are entitled to refer to them.

MR. MALASKY: On analyzing the documents we feel a close examination shows that every New Jersey town within the market urged by plaintiff and the vast majority of New Jersey towns in the market found by the Court as being relevant is closed to de novo branching either by virtue of having the home office of the bank or by virtue of being under 7,500 and having a branch office located therein.

Indeed, no New Jersey town in plaintiff's proposed market is open to de novo branching and only two towns in that portion of Warren County found by this Court to be included in the relevant geographic market, Franklin Township and Harmony Township, are presently open for de novo branching, and in both there are applications pending which, if approved, would close those towns once a branch is established. In that portion of Hunterdon County, New Jersey, found by the Court to be in the relevant market only three small towns, Bethlehem Township, population 1,250, Alexander Township, population 1,920, and Hampton Borough, population 1,330, remain open for expansion purposes [fol. 21] by banks in the First Banking District in New Jersey, and an application for a branch in Hampton Borough was recently denied. However, your Honor, it is clear that the revised statute, as indicated by the intervenor's documents, have created a great interest in banks within the First District to expand within both the market urged by plaintiff and that found to be relevant by the Court. In view of the extremely limited number of New Jersey towns open to de novo branching in each of these markets it appears that de novo entry is neither easy nor possible, and that the most likely avenue of expansion by the sizeable number of larger banks in the First District into this part of the First District is the merger route.

These documents thus indicate that any merger involving such larger banks, and even the Second National Bank of Phillipsburg, one of the defendants herein, with the Phillipsburg Trust Company in our proposed market could clearly satisfy the asserted convenience and needs of the Phillipsburg-Easton area while at the same time having far less

anti-competitive effect in our proposed market than we believe flows from the instant affiliation.

Similarly, the acquisition of any bank, including the Phillipsburg National Bank in the New Jersey portion of the market as defined by your Honor to be relevant, by a bank not presently operating therein would also be a less competitive [fol. 22] alternative, assuming that market to be the relevant one. Hence we feel that any such acquisition now possible under the revised new statute, of which your Honor has taken cognizance, would satisfy the asserted convenience and needs of the Phillipsburg-Easton area without any significant anti-competitive consequences, and should be considered by this Court in the light of the Supreme Court's mandate in the Nashville case as a lesser anti-competitive alternative in satisfying the needs and conveniences of the communities served.

Now, your Honor, I also have a few comments with respect to the stay question, and at this time I would include them at this point by saying first that with respect to the stay we would like to reemphasize the importance of the intent of Congress and the interpretation of that intent by the United States Supreme Court in the Houston case. We believe that the Houston rule applies across the board, and that there is no merit to the contention that a situation where a full trial has been held is or was meant to be distinguishable from the facts in the Houston case. Also the standard for continuing the stay is a statutory one, and certainly not the same as that applied in cases involving motions for preliminary injunctions, as the intervenor would suggest. As such, there is no requirement that the government show the probability of success on any appeal [fol. 23] that might be taken herein. To hold otherwise we believe would require this Court to find a total success on appeal–

THE COURT: Are you suggesting that I am precluded from giving that consideration?

MR. MALASKY: It is our position, your Honor, that the question of stay is a matter of the statute, and as interpreted by the Houston case we think it would be an anamolous position for a Court, your Honor, to be in to rule against us after a full trial on the merits and then attempt to determine the likelihood of success on appeal. We do not believe that this was the intent of the Act.

THE COURT: It is not an uncommon situation. I can set

your mind at rest on one aspect of it. My tentative opinion represents my best judgment. I do not feel that an appellate court will never disagree. That would be rash thinking. In fact, I have been affirmed on cases where I didn't expect the affirmance and reversed on cases where it was some shock. I am not going to take a position that because I wrote the opinion that no one would ever disagree with me. I wouldn't take the position that an appellate court would never disagree with me, so you need not worry about that.

MR. MALASKY: In any event–

THE COURT: But I do think that the probability of success is something that should be considered because I [fol. 24] do have to look at what I conceive to be the merits of your case, and how substantial your contentions are.

MR. MALASKY: Well, your Honor, we think that the language in the Houston case is clear when it says that the statutory stay should remain in effect absent a frivolous complaint under normal circumstances until the litigation has run its course. We think the intent there was to prevent problems of divestiture, as I indicated.

THE COURT: I wouldn't be happy with the task of divestiture. I can assure you of that, but, counsel, I wondered throughout this record just what is the nature of any probable anti-competitive effect. Either it is not in this record or it eludes me. We have two very small banks. I don't think anyone can put his finger upon any particular area of banking service where this merger would have its effect, and it seems to me when you bring in two small banks like this in an antitrust suit, it seems to be tantamount to saying that mergers are outlawed, but the Act doesn't say that. The furthest the court has gone is to say where there is a trend towards concentration and concentration is great there is a presumptive inference.

Your case, in my opinion, doesn't fall into that class. You have not shown such a concentration or any such trend toward concentration or that impact upon the market where the Court can indulge in any presumptive inferences.

[fol. 25] MR. MALASKY: I don't think any point was pushed, as far as I know, that there was a presumptive inference that mergers of banks are per se illegal. In fact, I may point out to the Court that since 1960 we have, as you know, under the Bank Merger Act we have to write a report to the Federal Reserve Board, the Federal Deposit Insurance

Corporation, the Comptroller of the Currency, to whomever the application is made. We must write a report to that responsible agency with respect to our views on the competitive factors. As I mentioned, since 1960 there have been almost 1,800 of these applications made, and we have brought suit—I believe the number is somewhere around twenty-five out of 1,800, so we certainly do not take the position that bank mergers are presumptively illegal. We do, however, take the position that after we have had the opportunity to analyze them and we have made a decision as to whether there are anti-competitive effects, and in those situations—

THE COURT: Let's get down to some simple terms and come face to face with the issues. In just what area of banking service do you say that there is the burden of anti-competitive effect? All I heard during the trial—and consequently I touch upon that subject—was a suggestion that interest on savings will decrease, interest on loans will increase, but the evidence did not support the theory.

[fol. 26] MR. MALASKY: Your Honor, if I may respond to that. Of course, in every bank merger case, in any merger case under Section 7 of the Clayton Act a market must be delineated, a geographic market, which we contend in commercial banking must be appropriate for the line of commerce or product market. We presented the Court with our idea of what we felt to be the relevant geographic area consisting of Phillipsburg and its environs and Phillipsburg-Easton and its environs, and as we contended at the trial we felt that in the overall line of commerce and in commercial banking in that geographic market the banking concentration would be increased and that—

THE COURT: Very insubstantially.

MR. MALASKY: In our proposed market I think it was more than insubstantial, in our proposed market.

THE COURT: I rejected your proposed market, Phillipsburg and environs, because it was, in my opinion, far too narrow. It is true if you could establish that as an appropriate market perhaps an inference of an anti-competitive effect could be drawn.

MR. MALASKY: We also did our Phillipsburg-Easton in the alternative.

THE COURT: I know. Even in Phillipsburg-Easton it is very hard for me to put my finger on anything that I can

reasonably call likely anti-competitive effect in any service, [fol. 27] but be that as it may—

MR. MALASKY: In any event, your Honor, getting back to the question of stay, if I may, we would urge again that the stay be extended; from the date of entry of the judgment so as to afford not only the Antitrust Division but the Solicitor General's Office, who, of course, makes the ultimate decision on appeals to the Supreme Court, to afford adequate time to consider the taking of the appeal.

THE COURT: Counsel, do you have an order for the entry of judgment?

MR. WATERS: I gave it to Mr. Malasky.

THE COURT: I am going to give him some time.

MR. ROACHE: Could I make a comment, that the whole purpose of putting my documents in was to show—was to go into the anti-competitive effect to show that now it is even worse than it was before, that even if the Department of Justice in its recent opinion in the National Newark & Essex case attempted to delineate the geographic area as the First District now as opposed to what they were proclaiming in this particular case—

THE COURT: Well, I may be in error, but I feel very strongly to the effect that if a merger of this kind, two small banks in an area of this kind, is to be enjoined we have reached the point of saying all mergers are bad. Congress never said that.

[fol. 28] MR. WATERS: I would like to be heard for just a moment.

THE COURT: All right.

MR. WATERS: First on the question of the motion to amend the findings of fact and conclusions of law, on the basis put before you today, I was a little disturbed by Mr. Malasky's last remark indicating that the appropriate remedy for us would be to allow one of these banks to be gobbled up by a larger bank over here in Essex County. We went to a great deal of trouble at the time of trial to put on a tremendous number of witnesses to show this Court that there was something very personal about the community out there, there was something that these small banks added to the community, and if we weren't allowed to merge this was just exactly the eventuality we faced and didn't want to. I think it appropriate now to make that suggestion now in the

light of the record, and that went in and was before the Court at the time it rendered its opinion.

THE COURT: I see no point in making supplements to my opinion in the light of the evidence that has been adduced. Suffice it to say that the evidence introduced tends to corroborate my findings of fact that the amended New Jersey statute now creates greater ease of entry into the market. Now there is emphasis upon the present [fol. 29] population figures. These are for the 1960 census. The evidence at the trial of this case supports an inference that the population is increasing rapidly and has been since 1960 in all the communities in the market area that I have drawn, and I think it may be inferred that the number of communities that are open for branching after 1970 will be greater than would appear from the 1960 census. I make that statement on the basis of the evidence of rapid growth which was never disputed by the government.

MR. MALASKY: May I respond to Mr. Water's statement by saying that we don't necessarily urge that a merger by one of the larger banks in Newark or anywhere else in the First District is necessarily appropriate. All we have said and tried to indicate is that it would be a less anti-competitive alternative by which the convenience and needs of the market, whether it be the Court's market or our market, whichever ultimately be found, could be satisfied. That is our position.

THE COURT: Well, we are getting a bit off the track with the suggestion that a bank outside the area might come in. After all it is up to the parties to the merger to decide what they want to do, and I have to give my attention to the merger that is before me, not one that might have been.

MR. MALASKY: We think that the Nashville case makes it clear that the convenience and needs of the community [fol. 30] cannot be considered to outweigh the anti-competitive effect that is ultimately found unless there were no less anti-competitive alternatives available to the bank at the time or subsequent to the merger.

THE COURT: You are thinking in terms of whether a large bank can fill this gap.

MR. MALASKY: Your Honor, I think—

THE COURT: As it stands at the present time one very powerful competitor in there with the absence of available

service of other banks might give that bank the substantial economic power to control the market, which is not considered desirable. I approach this from the standpoint that there would be a beginning of furnishing the services. The desirable situation would be if every bank in the course of time in that market began to develop these services, and I treated the merger in point of convenience and needs as a step towards partial satisfaction of the convenience and needs, not as a solution. I think in the course of time if there is an aggressive policy in commercial and industrial lending and an aggressive policy in trust services, I am sure that in due course, as has happened in other areas, other banks with capacity to develop those services will do so in self interest. This merger was not a solution. As I think I said in the opinion, it tends to diminish the present existing inadequacy. [fol. 31] Does anybody want to be heard on anything further?

MR. ROACHE: No, your Honor, except to call your Honor's attention to the fact that plaintiff keeps insisting on convenience and needs, and seems to fail to recognize that your Honor ruled that they failed to prove a violation of Section 7.

THE COURT: There, too, Mr. Roache, there are occasions when a District Judge stops short and says you don't have to go any further. You get before the appellate court and the appellate court remands and directs the taking of testimony. It was before me and while it was before me I felt it would be better to cover it.

I will grant a stay of forty days after the entry of judgment. You have already had a week.

MR. MALASKY: We had a proposed order that left blank the number of days.

MR. WATERS: I have a similar order, also a judgment. Perhaps you would like to consider—

THE COURT: Is there any objection to the form of order for entry of judgment?

MR. MALASKY: I don't believe that there is any objection.

MR. ROACHE: No objection.

MR. WATERS: If your Honor please, this order continuing the statutory stay, I submitted a form that just [fol. 32] set forth the date on which it expires.

THE COURT: I don't see anything wrong with the order

that recites it continues for a period of forty days from the date of judgment in this cause, and if appeal is noticed prior to such forty-day period until disposition of the cause. I see nothing wrong with that because it would be foolish not to include the last provision, because certainly if a notice of appeal is filed it is inconceivable to me that the appellate court wouldn't continue the stay until it is disposed of.

MR. WATERS: That is the thing that came to my mind—it wasn't the thought that was behind the order—technically where do we stand if this Court continues a stay and the Supreme Court has jurisdiction of the matter?

THE COURT: Well, it doesn't have jurisdiction until the notice of appeal is filed. In granting the stay I merely afforded the government an opportunity to decide whether it wants to appeal or not, and if the notice of appeal is not filed prior to the expiration of the forty-day stay you go ahead with your merger. It just places the government in a position where it has to make a decision within forty days, and I think that that is ample time.

MR. MALASKY: Thank you, your Honor.

THE COURT: This is not a situation where the Department of Justice is just getting acquainted with the case.

[fol. 33] I was not aware, Mr. Roache, of anything of such a delicate nature that there is need that it be directed that any portion of the record be impounded.

MR. ROACHE: No, there wasn't anything.

THE COURT: I am passing down two orders that I have signed. If there is any objection, I can still hear you. I think it is appropriate to enter the judgment with a forty-day stay.

You can conform your copies, but leave the original with the Clerk. I take it there is no objection to the form of either order which I have just signed.

I don't think there is anything further to come before me.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Civil Action No. 56-68

Plaintiff,

-vs-

THE PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY, and THE SECOND NATIONAL BANK OF PHILLIPSBURG,

Depositions of:

JOHN W. RHIMER
HERBERT W. RITTER
ROBERT H. CASTELINE
MATTHEW C. RICCIARDI

Defendants

-and-

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY,

Intervenor.

DEPOSITIONS of the above-named witnesses, taken by and before Dominick Annunziata, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, at the office of ROBERT B. MEYNER, ESQ., 83 South Main Street, Phillipsburg, New Jersey, on Wednesday, July 17, 1968, Commencing at 9:15 a.m.

APPEARANCES:

For the Plaintiff	ROBERT C. WEINBAUM, ESQ. EUGENE T. AUSTIN, ESQ., Attorneys, Department of Justice
For the Phillipsburg National Bank	MESSRS. MEYNER & WILEY, BY: ROBERT B. MEYNER, ESQ.
For the Second National Bank	MESSRS. CARPENTER, BENNETT & MORRISSEY, BY: MICHAEL S. WATERS, ESQ.
For the Intervenor	PHILIP L. ROACHE, JR., ESQ., Senior Attorney, Office of the Comptroller of the Currency

[fol. 3] JOHN W. RHIMER, Sworn.

DIRECT EXAMINATION

[fol. 4] BY MR. WEINBAUM:

Q Mr. Rhimer, would you please give us your address.

A I live in Uhlerstown, Pennsylvania. The mailing address is Frenchtown, New Jersey, however.

Q What is your occupation?

A I am Assistant Treasurer and Manager of the Riegelsville branch of the Girard Trust Bank located in Riegelsville, Pennsylvania.

* * * *

[fol. 5] Q Can you tell us approximately how large the Girard Trust Bank is?

A At the present moment or as of December 31 of 1967, it was $13,049,000.

Q Are you speaking of your branch office?

A That's right. That's the total deposits of the branch.

Q How big is Girard?

A Girard as a total is $1,400,000,000 or a little less than that possibly. I might be wrong on that. That's what the current statements are.

Q Do you know approximately how many branches Girard has?

A We have 62 branches.

Q What were the total deposits again of the Riegelsville branch as of year end 1967?

A Year end 1967 it was $13,049,000.

Q Can you tell us what the total loans were at the Riegelsville branch at year end 1967 if there is any way of measuring this?

[fol. 6] A I can give you an approximation of our loans. It's fairly accurate. At the end of 1967 we had put on 212 consumer loans, a total of $230,000. Commercial loans at that time, there were about 200 outstanding with a total of about $500,000. Mortgages—are you interested in mortgages?

Q Yes.

A We had approximately 295 mortgages with a book value of $2 million. I must qualify my commercial figure

there to indicate that that included more than strictly commercial loans.

Q What else did it include?

A It would include loans to individuals which we now consider consumer loans.

Q Do you have any idea of what the approximate figure of loans to individuals was?

A I am going to say that of that 200 loans, about 125 to 150 are actually personal loans, loans to individuals not in business.

Q Was this the manner of classification at the time the Girard took over Riegelsville?

A That's right. They only had one type of loan, commercial.

Q How far is Riegelsville from the City of Easton, Pennsylvania?

[fol. 7] A It is just about 9 miles.

Q Do you have any idea of approximately how far Riegelsville is from Phillipsburg?

A Just exactly ten miles. I just checked it on my way up this morning.

Q Is that from Riegelsville into the City of Phillipsburg?

A Yes. That was from Riegelsville in through Warren Glen and Alpha.

* * * *

[fol. 8] Q If a person has an account balance of $200 or more is there a service charge?

A There is no service charge.

Q Regardless of activity?

A That's correct.

Q Under $200 there is a service charge?

A That's correct.

Q Is the service charge dependent on the activity in the account?

A There is a 50 cents service charge and then a service charge for each check paid over five. In other words, they are permitted five checks to be paid for that 50 cents service charge.

Q And then it goes on to a per check basis?

A A per check basis, that's correct.

Q As of December 1967, Mr. Rhimer, could you tell us

what the proportion of demand to total deposits was in the Riegelsville branch?

A It was a ratio of about six to one.

* * * *

[fol. 33] Q Can you explain to us the various types of time and savings deposit business which are offered by the Riegelsville office of Girard?

A We have available regular savings deposit passbook accounts bearing interest at the rate of 4 percent.

Q How often is this interest paid?

A This interest is paid once each year.

Q What were your passbook savings totals as of December 1967, approximately?

A Total passbook savings was $5,200,000 at the end of 1967.

Q Can you estimate roughly how many accounts were represented by your passbook savings?

A I think there are about 4,000 but that I am not absolutely certain on.

Q Approximately how many demand deposit accounts would you have?

A About 1100.

* * * *

[fol. 35] Q Can you explain the bond type of service which is offered by the Girard?

A Yes. The Girard savings bonds are written for a period of ten years with interest at the rate of 5 percent compounded daily. They are redeemable or cashable on any three-month anniversary from the date of purchase. Interest starts on the date of purchase.

We have two types, the income bond where we will pay the depositor's interest income on a monthly, quarterly, semi-annually or annual basis depending on the amount that they would deposit at one time and their desire.

The Girard investment bonds, the interest is added to the value of the bond and is paid at either maturity, ten years, or when the bond is redeemed at any normal redemption period prior to that time.

Q What were your total time certificates of deposit,

including bonds, originating in the Riegelsville office for the year end 1967?

A It was about $5,800,000.

Q Can you explain to us whether or not the bonds offered by Girard, either the investment type or the income type, would be more or less attractive to given categories of saver or investor?

MR. MEYNER: I object to the question.

[fol. 36] It really calls for a conclusion and calls for the state of mind of somebody else.

MR. WEINBAUM: Well, this man is a banker and I think he probably is familiar with the types of people that do come in and invest in his bonds.

MR. MEYNER: You can ask him what his sales pitch is.

I think it is an improper question.

Q Would you answer the question.

A I cannot give any accurate figures but I feel having interviewed the greater portion of the purchasers, that the greater percentage is sold to investors beyond the age of 55 and 60.

In other words, it is getting more to our senior citizen group.

MR. MEYNER: What type was that?

THE WITNESS: Either income or investment. I would say possibly a man of 55 to 60 would be more inclined to the investment type where a man 60 or over would be more inclined to the income type.

Q In what multiples can you purchase these bonds?

A The investment bonds can be purchased for as little as $100 or in any multiples of $100.

[fol. 37] Q What is the largest investment bond that you have on your books?

A None have ever been sold for more than $100,000. Excuse me. Income bonds can be purchased at a minimum of $1,000 or in multiples of $100 above $1,000.

Q Have you found in your experience, Mr. Rhimer, that there is a given size category for either or both types of bonds, that is, more popular than any other size category?

A For clarification do you mean by that the total sales to an individual?

Q A given bond.

A Our bonds are all in blank. I am going to say the

greatest majority are sold in $5,000 multiples. In other words, a $5,000 bond is our most predominant one.

* * * *

[fol. 41] Q Do you offer trust services through the Riegelsville office, Mr. Rhimer?

A We offer no actual trust services through our office.

Q What if somebody wants to avail themselves of the trust services of Girard Bank?

A Their name, address and telephone number would be forwarded to the Trust Division at the main office indicating that an inquiry was made and they would contact [fol. 42] the individual directly, not through this office.

* * * *

[fol. 47] Q Do you advertise the availability of all your services?

A Our advertisements have been limited to our five percent bonds and 4 percent savings accounts.

Q Do you advertise in the Phillipsburg Weekly newspaper?

A No, we do not.

Q In any other newspapers?

A The only other newspapers are the Philadelphia Inquirer and the Evening Bulletin from Philadelphia, of course, which would be delivered up here, but the Easton Express is the only paper in this area at all which we have advertised in.

Q Do the Philadelphia papers run an ad for Riegelsville?

A No, they do not.

Q Do you do any direct mail advertising?

A At the present time, no.

Q Have you ever done any direct mail advertising?

A There were two pieces—no—there was one piece sent out as a direct mail piece.

Q When was this?

A This was in November of 1965. That was at the beginning of what was at that time our 4½ percent bonds.

[fol. 48] Q For how long did you use this direct mailing?

A It was one mailing.

Q Did you intend to continue the mailing?

A No.

Q Were there any other mailings?

A There was a mailing which went out in December of 1967. At the time Girard was offering 5 percent, ten-year bonds. That went to a selected group in Easton and Phillipsburg area.

Q Did your mailing previously referred to go to people in Phillipsburg and Easton?

A The previous mailing went to Bucks County, Northampton County, Hunterdon and Warren Counties.

* * * *

[fol. 52] Q Will you make available for us, if at all possible, a copy of this survey which was sent down to the [fol. 53] main office of Girard?

A Yes, I will.

* * * *

CROSS EXAMINATION

BY MR. MEYNER:

* * * *

[fol. 54] Q Isn't it true that in the period of four years from the time you took over the Riegelsville National Bank that your total assets have practically doubled?

A That's correct.

Q Would you say a good deal of this is attributable to the merger?

A Yes.

Q So that a merger has given a stronger bank to Riegelsville?

A That is correct.

* * * *

[fol. 56] Q Now purposely by virtue of the policies of the bank in Philadelphia you have been instructed to be more of a depository than a business-getter, isn't that correct?

A Yes, that is correct.

* * * *

[fol. 57] Q Isn't it true that you have a $4 billion trust business in Philadelphia?

A I don't know the exact figure but I dare say that that's very close.

Q The statement says that you have $4 billion and in the last year you got something like $400 million.

A Yes.

* * * *

[fol. 62] Q Now whose idea was it that there be direct mail advertising in November of 1965?

A I'm trying to think back. I think that I at that time made a request to our Advertising Department wondering if we could make the area aware of the fact that we had 4½ percent bonds.

Q What area?

A The Riegelsville service area.

Q Then if it was just the Riegelsville area why did you use Warren, Hunterdon, Northampton and Bucks County?

A This was not my decision.

Q This decision was made in the main office?

A That is correct.

Q So that they might have had a different policy than you have?

A That could conceivably be, yes.

Q Did you enter any objection to their soliciting in the four counties?

A It was done before I knew about it. The advertisement was prepared and mailed.

[fol. 63] Q What sort of a list was it?

A It was a list taken I believe from registered automobile owners. I would have to contact the Advertising Department for any accurate information because I was not asked.

* * * *

[fol. 66] Q And you were primarily interested in getting some five percent savings bonds?

A That is correct.

Q You were not interested in commercial loans?

A No.

Q Consumer loans?

A No.

* * * *

Q You had a concluding sentence in that advertisement that appeared in the Easton Express covering all of this wide area all the way up to Stroudsburg and all the way over to Bethlehem and all the way over to Hackettstown and all the way down to Frenchtown and the concluding sentence is, "It pays to do all your banking here in Riegelsville."

A We were not soliciting any specific one.

Q What do you define "all your banking" to be?

A Any service offered by the bank.

Q Well, then you were soliciting in a wider area than the three miles north of Riegelsville? I show you the ad.

A Yes, I have seen the ad.

[fol. 67] Q You asked them to do all of their banking there. Who prepared the ad?

A The Advertising Division at the main office.

Q And the main office maybe has a different concept than you have now?

A That may be.

Q Whose idea was it or who got the list of automobile owners that were solicited by mail in the four counties?

A That was our advertising division at the main office.

Q Again the main office had a different policy than you have been instructed as branch manager to enforce?

A That's correct.

Q Now what was this selected list in December of 1967?

A The selected list in 1967 was our printed 5 percent bond advertisement brochure sent out to attorneys, physicians and undertakers in the Easton and Phillipsburg area.

Q And at that point you were soliciting three miles north or well beyond three miles north of Riegelsville?

A And the reason that piece was sent out at that time to those specific people was that we had gotten so many phone calls from attorneys in the Easton and Phillipsburg areas requesting this that we felt we could serve them all and do a better job for them to let them have the information [fol. 68] rather than call in for it every time.

Q But a lot of this was motivated by your Philadelphia newspaper advertising?

A Yes.

Q Some of your Easton Express advertising, your television advertising in Philadelphia and perhaps radio advertising?

A That is correct.

Q So you have been doing business and have been soliciting business in Warren, in Northampton, in Hunterdon and in Bucks County?

A By virtue of our newspaper advertising primarily, yes.

* * * *

[fol. 72] CROSS EXAMINATION

BY MR. ROACHE:

Q Mr. Rhimer, who is your assistant?

A Miss Jane Bean.

Q How long has she been with that office?

A Twenty years.

Q Is she very familiar with the operation of the office?

A Yes. She was head bookkeeper for a good many years and has been the assistant manager actively only for about a year.

Q Is she a competent person?

A Yes.

* * * *

[fol. 75] MR. ROACHE: She said they had a corner on the market in C.D.'s in Easton and Phillipsburg and that they get a good amount of funds from Phillipsburg, a substantial amount from Easton and you get funds from outlying areas as far as Bethlehem in C.D.'s.

Q Now is that true, Mr. Rhimer?

A That is true.

Q When this survey was made that you supervised [fol. 76] were the addresses compiled in accordance with the complaint in this case, with the areas alleged in the complaint?

A No.

Q So you had entirely different classifications as to areas than the complaint in this case?

A That is correct.

* * * *

[fol. 89] HERBERT W. RITTER, Sworn.

DIRECT EXAMINATION

BY MR. WEINBAUM:

Q Mr. Ritter, would you please state your address.
A 1 Chatham Place, Wallingford, Pennsylvania.
Q Your present occupation?
A My job with the bank?
Q Yes.
A I am vice president in charge of branch administration at Girard.
Q Mr. Ritter, during the course of Mr. Rhimer's testimony a question was asked with respect to a phone call he had received in connection with some direct mail solicitations which the Girard Trust had engaged in in and [fol. 90] around the area of the Riegelsville bank.
MR. MEYNER: I object because the man said that it was in four counties. Now you are talking about in and around the Riegelsville bank.
MR. WEINBAUM: Strike "in and around the Riegelsville bank".
Q Solicitation which was made for the benefit of the Riegelsville bank. Can you fill us in on the details of when this phone call was made?
Mr. MEYNER: I trust it would be of his own knowledge.
Q And the circumstances under which it was made.
A Yes. First of all, I don't recall the exact date. I know it was probably towards the end of last year. I received a call from Warren Elwell, who is vice president in charge of our correspondent bank division.

* * * *

[fol. 91] Q Did you call Mr. Rhimer?
A Yes, I did.
Q What did you tell Mr. Rhimer?
A I informed Mr. Rhimer that he was no longer to send any direct mail pieces in the State of New Jersey.
Q Did you request him also not to send any direct mail pieces in Pennsylvania?
A No, I did not, just in the State of New Jersey.

Q Did you explain to Mr. Rhimer why he was not to end any more direct mail pieces in New Jersey?

A Yes, I did.

Q What did you tell him?

MR. MEYNER: Of his own knowledge now, not on what he heard from somebody.

Q Of your own knowledge.

A Of my own knowledge I do know that the State of New Jersey does have an exclusion situation as far as personal solicitation in the State of New Jersey by foreign [fol. 92] banks and in effect this was really a violation of this by sending direct mail pieces in the State of New Jersey.

* * * *

[fol. 96] CROSS EXAMINATION

BY MR. WATERS:

Q You are the vice president in charge of the branch division?

[fol. 97] A That's correct.

Q As a matter of policy does the Girard Trust Bank stand behind all of its branches and their activities?

A Absolutely.

* * * *

[fol. 100] ROBERT H. CASTELINE, Sworn.

DIRECT EXAMINATION

BY MR. AUSTIN:

Q Mr. Casteline, would you please state your present address.

A 2947 Washington Street, Allentown, Pennsylvania.

Q What is your present title?

A I am President of the Merchants National Bank of Allentown.

Q How long, approximately, have you worked in commercial banking?

A Forty-three years.

Q How long have you been with Merchants National?

A Forty-three years.

Q How long in your present managerial position?

[fol. 101] A January 1965.

Q Would you enumerate, please, the major positions previously held at Merchants National during your years with them.

A Prior to this, executive vice president, prior to that, vice president and cashier, prior to that, cashier, prior to that, assistant cashier and all the way down.

Q Hereafter we will refer to your bank as Merchants National rather than give the entire title.

A All right.

Q Where is Merchants National headquartered?

A 702 Hamilton Street in Allentown, Pennsylvania.

Q This is in what county, please?

A Lehigh.

Q When was Merchants National established?

A 1903.

Q How many branches have you, branch offices?

A Eleven, counting the main office. We count that as a branch.

* * * *

[fol. 122] CROSS EXAMINATION

BY: MR. MEYNER:

[fol. 123] Q You have been with the bank some 43 years?

A Right.

Q Would you say the trade area served by banks in the Lehigh Valley generally has been expanded?

A Yes, no question about it.

Q Isn't it true at one time there was a good deal of space between Allentown and Bethlehem and Bethlehem and Easton and the outlying sections of Warren County?

A Yes.

Q And now this is being built up?

A Yes. In fact, if I may make a comment, it is all one area now. You can go from Allentown on the one end or even up a little further straight through to the other side of Phillipsburg and now it is one area. You just keep on passing houses and business pieces all the time. It's solid.

Q Is this reflected in shopping patterns?

A I would say so. You have shopping centers there. We have them midway between the towns and we have a number of them around Allentown, cropping up west of Allentown and all over the place.

[fol. 124] Q Do you make any effort to avoid business from Easton or Phillipsburg?

A I would be crazy to say yes. We would like to have as much as possible.

Q Do you send representatives in not on a regular basis but on an occasional basis?

A Upon occasion we do. When we get a good lead on something we will send somebody over. He will hotfoot it over real fast.

Q This is with respect to what type of business?

A Generally commercial.

Q That is commercial loans?

A Yes, and deposit accounts.

Q Do you do the same with respect to trust business?

A Yes. There more so than individuals, of course.

Q But you are in a position to handle pension accounts?

A Yes.

Q And you would entertain such business?

A Yes.

Q If you get a lead you would send somebody to this area?

A Yes.

Q How about in Allentown? What would you say their [fol. 125] drawing area for customers is? I mean like Hess Brothers.

A Well, you could probably take a five or six state area, as a matter of fact. I have talked to people who have been from Chicago to visit Hess Brothers. They have heard about it. It's on nation-wide radio, T.V. publicity. They know of Hess Brothers. It is quite fabulous and they tell me about it.

Q And there are shopping centers all the way from outside of Allentown to outside of Phillipsburg where quite a few people move from one area to another?

A That's right. Hess Brothers is quite a drawing card.

Q They offer plenty of parking space?

A No. As a matter of fact, very little. We have quite a parking system in Allentown which we are proud of.

Q This is a city system?

A That's right. Well, it is not run by the city. It is run by a corporation, Park And Shop.

Q But if you go into a department store you can get your parking ticket validated?

A Yes, that's right.

Q Do you find that many other institutions offer the same services or many of the same services as you? I am talking about deposits.

You have other places people can put their deposits, [fol. 126] don't you, building and loans, credit unions?

A Oh, yes.

Q Do you find that on the increase?

A There is no question about it. A lot of these companies, it seems every month we hear of another credit union coming into existence, which, of course, are going to make a play for deposits and loans.

Q You have a very important finance company in Allentown, don't you, that has a very wide area?

A Are you referring to General Acceptance?

Q Yes.

A Yes. That's four blocks away from us, the main office.

Q And they are in competition in this entire industrial area you described?

A Quite definitely.

Q Do you have competition from building and loans for the deposit dollar?

A Yes. In fact, I would say they take the bulk of the mortgage business in the area.

Q How about the auto finance companies?

A They are in direct competition. They have the same rates as we do.

Q How about the small loan companies?

A Like Household Finance, yes. They are in [fol. 127] competition but not as strongly because of their rates. That is for the small $100, $200 or $300 account, which we are not too wild about anyway.

Q How about the appliance companies? Do they have separate finance companies too?

A Some of them do. You have the General Electric Credit Corporation and CIT and they have tie-ins with various companies.

Q Do many of them have main offices in Allentown covering this entire area?

A You are talking about the finance companies now?

Q I am talking about the appliance finance companies or the automobile finance companies.

A Well, General Electric Credit Corporation does but I am not in a position to say what others might be there. They have offices in Allentown.

Q Is this area covered pretty well by insurance agents?

A Yes, quite well.

Q And are they reaching out trying to get the savings dollar?

A Well, that is a little difficult to answer. When you say they are reaching out for the savings dollar, it depends on what type of contract they are peddling. Of course, your term contracts have no savings feature but any [fol. 128] other contract that I can think of, ordinary life, annuities, endowments, they all have savings features and reserve features which, of course, take the dollar.

Q What would you say about brokerage firms and stock market transactions?

A Yes. In fact, they all hit some of our better customers and try to get the brokerage accounts.

Q Now I'm asking you a series of questions that show that you as a bank in this area have other people who want to get the savings dollar.

I would like to direct some questions along the line now in the area of people competing to borrow money. In this area I think you said that your savings and loans, both federal and state, are competitors?

A That's right.

Q How about insurance companies on mortgages?

A They compete on mortgages but not to the extent of the savings and loans.

Q Isn't it true that they have made the larger loans for the shopping centers?

A Oh, yes. They take the permanent obligations on.

Q Do you know any of these shopping centers that weren't financed by an insurance company?

A Some were financed by New York banks which have the capacity to do that. I would say the majority of them [fol. 129] were financed on a permanent basis by insurance companies, particularly the department houses.

Q And credit unions and Household Finance and all of those groups are out after loans?

A Yes, that's right.

* * * *

[fol. 130] Q So far as comers and people going to and from work and shopping, would you say that Allentown, Bethlehem and Easton and Phillipsburg and the areas around them are one integral area?

A This would be my feeling, yes.

Q And there is the potential for banking business to reach out beyond where the customers have been coming from but you can go out and get business in that area?

A That's right, we can.

Q And in addition to the rivalry that exists you have seekers of deposits and seekers of credit extension from New York and Philadelphia also moving in?

A That's right.

Q You have heard of the merger of one bank with about $20 million and another bank with $16 million or it has been mentioned as $22 million and $18 million to form a $40 million bank?

MR. WEINBAUM: Are you speaking of the [fol. 131] Phillipsburg merger?

MR. MEYNER: Yes.

A Yes.

Q Have you been responsible over the last twenty years for hiring personnel in your bank?

A For a certain period of time, for about five years.

Q For the last five years?

A No. I would say perhaps ten years ago.

Q But you still confer with the personnel people and discuss it?

A Yes. If they have any problem areas they will discuss it before they move. We have a personnel department.

Q In your opinion would a $40 million bank have a better opportunity of getting personnel, top echelon, first, second and third, than an $18 million or a $20 million bank?

A I would think so. I think the larger you get, of course, the better opportunity you have for attracting higher quality executives and clerks simply because you can pay the price.

Q Based upon your experience of seeing three fairly large banks in Allentown do you have any thoughts as to the role of a small bank at $18 million or $20 million?

MR. WEINBAUM: In Allentown?

MR. MEYNER: In this area.

Q What are the prospects of the smaller bank?

[fol. 132] A That's difficult to answer. I'm not sure exactly what you mean.

Q Can a $40 million bank serve the community better, in your opinion, than an $18 million bank?

A Oh, there is no question about it.

Q On what do you base that?

A You have more services to offer than can a smaller bank and you can acquire better personnel. They can extend their market area.

They can do many more things than a small bank can that does not have the qualified personnel or the number of personnel or the equipment or hardware or whatever you want to call it.

I have found this out from experience. We can do many more things now than we could do when we were a smaller bank. We have a marketing department which we couldn't afford to have years ago.

We have a personnel department, we have computer hardware. This is something we got through acquiring size.

* * * *

[fol. 137] Q Do you feel that the Allentown-Bethlehem shopping area is the big main shopping area for the areas I have just mentioned, Warren County, Northampton, Lehigh Valley? Would that be considered the big shopping area?

A I would say so. We like to think so.

[fol. 138] Q And it attracts people from all within this area?

A I know when the Two Guys went into this on 7th Street we were in direct contact with this, getting their paper and that paper came from the northern part of New Jersey, the western part of New Jersey, White Haven, the coal regions, anywhere. It comes from within a radius of 50 to 75 miles.

Q So as a result of people coming to this area you would get paper from people residing in Warren County, Northampton County, Lehigh Valley?

A Yes.

Q This is good business that you like and is well worth while?

A Well, there are arguments pro and con on that. It can be good and it can be bad.

Q But it is business you are seeking?

A It is business, it is traffic, let's put it that way. It may lead to other business through your contacts.

Q Do you have that business now?

A We have some of it but to what extent I couldn't say. We have sort of gotten away from it as far as the Two Guys From Harrison are concerned because we didn't like the quality of the paper.

Q Are there other organizations in the city from whom you buy paper?

[fol. 139] A Yes.

Q From people who come from outside the Allentown area and maybe Warren County to do business in the shopping area?

A I would say so but to what extent I don't know.

Q Would this be true also for automobile loans?

A Yes.

MR. ROACHE: That is all the questions I have.

REDIRECT EXAMINATION

BY MR. AUSTIN:

[fol. 141] Q Do you have occasion to lend money to small loan companies, credit unions, consumer sales companies?

A Yes.

Q Do you do so on a regular basis, fairly frequently?

A Yes.

Q Yet you do regard yourself as being in competition with these same institutions?

A No question about it.

Q What is the reasoning behind this on the part of your bank? In other words, why would you lend money to a direct competitor?

A That's a very difficult question to answer. It's business. It's a loan, it's income. You take every major finance company in the country or any finance company, your installment sales company, they borrow money regularly from insurance companies, from banks.

They have lines all over the country, millions of dollars of lines of credit. They have got to have this or they couldn't exist.

It's good income. You pick up compensating balances. If you want to get a 7% rate you might get a 15% or 20% compensating balance, which is a nice effective rate for the bank.

Q Would it be fair to say that if you thought that [fol. 142] these same financial institutions were going to hurt your business that you might not deal with them, you might not lend them money?

A No, I wouldn't say that. We would lend them money.

Q Even if they were going to hurt your business?

A They do hurt us. At the same time we get it from them. We get it two ways. We don't get it on direct loans or small loans. I can't remember the expression I used before.

The small loans do build up traffic for us, the foot traffic in the bank which may develop into a savings account or club accounts or safe deposit facilities or something else.

It brings traffic into the bank, even though they are maybe $100 or $200 or $300 accounts and the cost of handling that account does not pay us, but we hope to overcome that by other services rendered.

They will buy cashier's checks or they will buy registered checks, things of this nature.

Q Do you make loans on a regular basis to General Acceptance Corporation located there in Allentown?

A We do.

Q If it should develop that the volume of loans that you made to General Acceptance Corporation far outdistanced [fol. 143] or exceeded, shall we say, the compensating balances that you were getting from this same firm, would you continue nonetheless to have dealings with this outfit?

A No. As a matter of fact, that is a requirement in the loan agreement, that they maintain balances and this can vary. Sometimes it will be 10% while they are off the books, 20% while they are on our books and sometimes they will strike an average of 15%.

It depends upon your loan agreement, what you work out with the borrower.

Q Let me refer for a moment to your testimony in regard to a dealership. I guess it was an appliance dealership who was supplying you paper and then you dropped him because you said you didn't like the quality of its paper.

What do you mean by that?

A The credits and the collectibility. You will find this very often with dealerships. They don't want to be bothered with checking credits. They like to just come to the bank on a non-recourse basis and throw anything at you that might come in, any source, as they walk in, establish the credit and dump it in the bank's lap.

This sort of thing we don't like because too often your credits are stinking and you have a problem on your hands.

[fol. 144] Q Is this a fairly prevalent problem with working through dealers, discounting their paper, so to speak?

A Not as much as it used to be. The dealers now are cleaning up their credits and they are watching it closely too because we shy away as much as possible from the non-recourse basis.

We like the dealer to have some responsibility involved.

Q Well, as a matter of policy at your bank do you prefer to lend money directly, that is, to the prospective borrower as opposed to working through dealers?

A Yes, this is our preference.

Q Why is that, may I ask?

A Well, let me take a specific instance, particularly with television. This is a real sensitive area. If they come in to us and they will say they want to borrow money, three or four or five hundred dollars to buy a television set, this is fine because we loan the money directly to the subject.

If that television doesn't work that's no skin off our teeth. If it comes in through a dealer, most times they don't go back to the dealer but they raise hell with us and refuse to pay their loan until the dealer takes care of it.

Then if it is anything but a quality dealer you have problems.

So to take it direct, we have none. Once in a while, [fol. 145] yes. As a matter of fact, right here in Phillipsburg I had a difficult time with a woman who had a home improvement job done, a siding job, and she kept interrupting me at my dinner every five minutes.

MR. MEYNER: This was a Phillpsburg customer through a dealer?

THE WITNESS: Yes. This was about eight or nine years ago.

Q Do you find that lending money directly to customers as opposed to buying dealer paper is more profitable to the bank?

A No.

Q In other words, it doesn't hurt you to pay a percentage to the dealer?

A Well, we don't pay much of a percentage to start with. We have always more or less resisted this. Our direct rate to a customer is a maximum of 6% and dealers coming in can go to 6, 7, 8, 9, 10, whatever the traffic will bear.

Of course, under the new regulation I guess they get 1¼ or something like that.

Q In your experience would you say that some of these small loan companies, appliance dealers, consumer loan companies would accept credit risks that you as a banker would not accept?

[fol. 146] A They do, but again not to the extent they used to. They have cleaned up considerably on their credits too.

* * * *

[fol. 149] MATTHEW C. RICCIARDI, Sworn.

DIRECT EXAMINATION

BY MR. MEYNER:

Q Where do you live?

A Briarstone Road, Phillipsburg.

Q How long have you lived in this general neighborhood?

A Since 1940.

Q What business were you in prior to the time you went into your own business?

A I was assistant chief engineer and then chief engineer at the Cannister Company down the street here for about 7 years.

[fol. 150] Q This is prior to when?

A From 1940 to 1947.

Q Cannister Company at a later time was merged with another company or taken over?

A Yes, they were taken over.

Q By what company?

A Actually it was sold at auction and was piecemealed out and we bought part of it.

Q And the remaining part?

A It was auctioned off. We bought the container part of the business.

Q And the other part went to whom?

A It was sold openly to the public.

Q Who is running that part of it these days?

A Presently it is run by Sunoco Paper Products.

Q When did you leave them and engage in business on your own or with someone else?

A June 1947 we started the business in New Village, New Jersey, with Mr. Madison Cowell. The two of us were partners in this venture.

Q Was it corporate?

A Yes.

Q It was even ownership?

A Yes.

Q From 1947 to what date did you operate this plant [fol. 151] at New Village?

A Until 1954. We operated the United Can Company in New Village.

Q Then in 1947 what did you do?

A No. That would be 1954. From 1954 to 1956 I was retired for two years more or less and then I ventured into my own business under the name of M. C. Ricciardi Company.

Q Where do you have plants under the name of that company?

A At the present moment, Alpha, New Jersey, Easton, Pennsylvania, Washington, New Jersey.

Q You have interests in other companies as well?

A Right.

Q Where?

A In Atlanta, Texas, Mendon, Louisiana, Milen, Tennessee, Buffalo, New York.

Q And those are only partial interests?

A Partial. And Pryor, Oklahoma.

Q When did you start doing business with the Phillipsburg National Bank & Trust Company.

A The first day I came to town in 1940.

Q You have done business either as the United Can or individually or as the Ricciardi Company since that time?

A That's right.

Q Are you a director of any other bank?

[fol. 152] A Yes, the Phillipsburg Trust Company

Q What volume of business do you do in these companies of the Ricciardi Company in Easton, Alpha and Washington?

A On a pool, in other words, from a tax point of view everything is run in the area of $5 million to $9 million. It varies, of course.

Q Have you been a seeker of credit from the Phillipsburg National?

A Yes.

Q Would you give us a brief description of the kind of business and the kind of borrowing.

A Yes. Our business is an odd type of business. We are in packaging and we might be the largest in the packaging business for government type of packaging at the present moment, that is, packaging of shells, what is called the intermediate pack for shells and rockets. It's in those areas, spare parts. I think we are the largest in it country-wide.

Occasionally or not occasionally but quite often we will get these contracts on the spur of the moment and naturally they involve quite a bit of money and we are not the largest, not the richest as far as this company is concerned, a small company, but we do need financing and every company needs financing of some type or another.

[fol. 153] Usually what we do, we always like to take one of these contracts to a local institution where we have been doing business continuously in this fashion over the years and because it is a large or a fast turnover of capital, in other words, we may have to order steel in advance, like at the present moment we have on order and in storage $200,000 worth of steel because of the steel strike.

We always have to carry a certain amount of inventory that requires cash.

Now it is hard to buy. You have got to get into their schedules. The biggest corporations still have to borrow money and I consider myself not the poorest and not the richest either but we are faced with borrowings.

As I say, at times we would like to borrow more than what we can borrow locally but we try to get along the best way we can.

That's all I can say.

Q Would the present state of your business and the growth you expect be better served by Phillipsburg National if they could loan you roughly double the amount of money they are loaning you?

A Yes, no question about it. It limits our business. In other words, I have limited myself to the amount of money that I can borrow locally because I don't care to go out of the area for it. It's just too much bother. We could get it [fol. 154] and we have been asked by numerous financial institutions, banks, but I don't like to go to the city. I like to stay in the area.

If we were able to borrow more than we are borrowing we would be a bigger company, no question about it.

Q Have you been approached over the years from 1940 to 1968, including up to the present moment, by other banks in the area?

A Yes.

Q What do you consider the business area?

A Well, actually I would say it would extend from Allentown, above Allentown in a circle, based locally here about where we are standing at least 25 miles, 30 miles, including Allentown, Hackettstown, in that area, at least a 25-mile circle.

Q What do you base that on? Employment?

A Employment, yes. A lot of our people drive to our point of business from great distances within this 20-mile distance. We have a couple of people from Allentown, a lot from Easton who drive into Washington and from Hackettstown.

Q How about the general shopping area?

A I would say it's in the same circle. For shopping you may go beyond because some people go to Newark, some go to Philadelphia, some go to Trenton.

[fol. 157] Q If the Phillipsburg National Bank had a full-time service officer could they offer you any services? Would you be able to avail yourself of the services?

A I would think so. I think it is a service that is lacking in the area generally. All the small banks I know frown on it. We are looking for a bank right now to handle our profit-sharing, annuities and what-not. We have had contact with the Philadelphia banks but there is no one locally at all.

Q If this merger is not completed what is your alternative with respect to borrowing?

A Well, we would have to go out of town, as I said before. We may have to go to Philadelphia, to Trenton or Newark. We don't like to go there. As I said before, we like [fol. 158] to stay locally here. We would have lesser problems. We wouldn't have to repeat all the information from the local bank with the

corporate bank but chances are we would have to go to Newark as we have in the past.

Q Will you describe how your borrowing occurs and what sort of turnover you have?

A I would say on the average it's about every two weeks, sometimes weekly. I would say it's on the basis of about every two weeks. I will need money this week to buy steel. We have different ways of doing it. We have to provide the collateral or a line of credit and in the case of the line of credit we go to the bank and we present our proper paperwork and we get money.

Of course, we also take the other course of possibly using accounts receivable as collateral and we pay immediately when we are paid and it's usually on an average of about 21, 22 days, sometimes 30 days. On the average it's about 20-some days.

Q In other words, you invoice something, turn over the receivable and then you get the money and when the money comes in it comes in to the bank?

A Right. That's the easy way of financing that I know about without getting involved personally with my personal finance.

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[fol. 161] REDIRECT EXAMINATION

BY: MR. MEYNER:

Q Would you say this is accurate: The Phillipsburg National has reported that you were the largest borrower in 1967 and the total credit granted was $1,632,796.99?

A I would say that's right.

MR. MEYNER: That is all.

CROSS EXAMINATION

BY MR. WEINBAUM:

Q Mr. Ricciardi, the Ricciardi Company has three [fol. 162] plants in this area?

A It has three plants presently or four plants, really, four locations.

Q Where are they?

A Alpha, Route 69 and Park Avenue in Washington, New Jersey, and the others, at West Broad in Washington—we have

two plants in Washington—and the other is in Alpha, New Jersey, and we have another plant in Easton, Pennsylvania. It's not a large plant but it is a plant, about 10 or 12 acres.

Q Would that be two plants in Easton or just the one?

A One.

Q You indicated on questioning from Governor Meyner that you do maintain a banking relationship with the bank in Washington?

A That's right.

Q Is that the National Bank of Washington?

A Yes.

Q Did you establish a relationship there by virtue of the fact that you have a plant there?

A Well, actually the reason we did it is because we might need additional credit arrangements and we have opened an account there. I haven't used it at all. It's a dormant account. It is sizable in and out but you never know [fol. 163] when you might need it.

Q As a businessman you like to keep alternative sources of credit available?

A Right. I would like to have as much credit available to me as I need. We like to do it naturally with one institution as far as borrowings are concerned because of the bookkeeping angle. From the Internal Revenue point of view I think it is best to keep it in one account.

Q Why is that?

A Well, it's less paperwork.

Q For you?

A For us, yes. There is less checking for our auditors.

Q You mean if you could get $2 million from one bank you would rather do that?

A Right. It's cheaper for us. We would rather do that.

Q Would you like to be dependent on one particular bank for all your credit needs?

A I would say so.

Q And it wouldn't bother you that there weren't alternatives to turn to should the one bank decide for one reason or another not to deal with you?

A It's the inconvenience. Then we would move out of that bank into a bigger bank. It's the inconvenience to [fol. 164] work more than one bank.

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[fol. 114] RICHARD C. DAUBERT, Sworn.

DIRECT EXAMINATION

BY MR. WEINBAUM:

Q Mr. Daubert, what is your address, please?

A 627 Hillcrest Boulevard, Phillipsburg, New Jersey.

[fol. 115] Q Can you explain what your present position or responsibilities are at Second National Bank?

A Just a general description of what is involved?

Q Yes.

A I am Vice President and Cashier of the bank, I handle personnel, operations, payroll, supervise the mortgage and loan department.

* * * *

[fol. 136] Q Could you explain for us, Mr. Daubert, the type of competition your bank encounters from commercial banks in Easton?

Let's talk first about savings accounts.

A Commercial banks in Easton as far as savings [fol. 137] accounts, their rate over there is 3 percent and ours is 3½ in Phillipsburg or at least the Second National Bank's is.

It is difficult to define whether there is any competition here as far as savings accounts are concerned between the Easton banks and the Phillipsburg banks. I don't know.

Q You don't know that?

A Actually, there are not many that would withdraw from here to go over there.

Q Will people come from Easton to Phillipsburg to take advantage of the 3½ percent?

A There are those that would.

Q The answers to the interrogatories which you have provided for us, Mr. Daubert, have been tabulated and they indicate that in dollar amount approximately 7 percent of our total time and savings deposits originate from people in Easton and the environs.

We are wondering whether in view of the fact that your savings rate is a half a percent higher why there would not be

a far greater number of people taking advantage of the higher interest rate.

Do you have any views on that?

A I don't think that you are going to see or you won't see too much of the—you see, this is an [fol. 138] old community where people have been dealing with one particular bank for years and I don't think for one-half a percent that you are going to see a very large fluctuation as far as withdrawal of accounts or transfer of accounts for one-half a percent.

I don't know. That's a difficult question to answer.

Q Are the checking account arrangements of Easton banks fairly similar to those of Phillipsburg banks, as far as you know?

A The various types of accounts that they offer?

Q Yes, and the charges, the various monthly charges for a person who is maintaining a checking account in Phillipsburg and in Easton?

A I don't know what the Phillipsburg National banking charges or the Easton banks charges are.

It is possible they could be similar. I know they have special checking accounts in Easton National which we don't offer at Second National.

Q Do you know if the Easton banks devote any of their energies to actually sending people over to this community to solicit business?

A Yes, this they do.

Q They do that?

A Yes.

[fol. 139] Q Which banks do that?

A Well, Easton National, I believe, has a man that is a solicitor.

Q Do you know his name?

A No, I don't.

Q Is he a loan officer or new business getter?

A New business, which would cover loans or anything. I think it is Union Bank in Bethlehem who has a man that solicits accounts in this area.

Q And he has been doing this for some time?

A That has been going on for quite a few years.

Q What is his name?

A I think that man's name is George Helick, I think.

* * * *

[fol. 141] Q The First National Bank of Allentown, do they come down into Easton and work the territory?

A Well, Merchants National Bank in Allentown does.

Q How about First National Bank of Allentown?

A This I don't know but I would assume if Merchants has a man on the road I am sure that First National of Allentown also does.

Q Who do they send down from Merchants National Bank?

A There is a fellow by the name of Jack Dennis who solicits various accounts, I suppose, and also various banks for services.

* * * *

[fol. 143] Q The First National Bank of Allentown is a major competitor of yours?

A It could be. It's possible.

Q I am asking whether they are.

A Well, you are asking me whether I think they are?

Q Yes.

A I think they are.

Q You think they are?

A Yes.

Q Do you find them taking a considerable amount of your business from you and you in turn take a considerable amount of business from them?

A I can't honestly say that they are taking a considerable amount of business from us. I can say that they have the potential ability to take a considerable amount of business from us.

* * * *

[fol. 146] Q On what basis did the banks, the proposed merger partners, designate the 3 larger Easton banks as its most intense commercial banking competitors?

A How did we arrive at this information?

Q Right.

A Well, court records would indicate that the recordings of mortgages and so forth in the Phillipsburg area that the Easton banks took and this was one indication.

Q Apart from mortgages are there any other things? Does the proximity of these banks to Easton have anything to do with the fact that you may be competing more intensively with them than, say, a bank in Allentown or in Blairstown or in Hackettstown?

A Of course, they are right across the river from us. Naturally you have people working in Easton that reside in Phillipsburg and vice versa. This I don't know. They are larger banks and they are able to offer more in the way of loans and services, of course, than what we can.

Q Do you face any competition from the bank up in Portland, Pennsylvania 25 miles away?

A I can't state whether we face any competition from that bank. To go back to your question for just [fol. 147] one second regarding the Easton banks, we come back to that same thing about the floor planning for dealer paper or dealer contractors.

Easton National is one of the largest floor planning banks around here, in this immediate area right here. They do a tremendous amount of floor planning.

Therefore, they pick up through the floor planning consumer paper and from the consumer paper, of course, comes eventually checking accounts, savings accounts, et cetera.

* * * *

[fol. 148] Q How does Belvidere compete with Second National?

A They pay a higher interest rate on their passbook and have been, 4 percent.

Q But you have indicated that a higher interest rate doesn't mean a great deal as far as a person picking up his account from the Easton bank and putting it in the Phillipsburg bank.

Why would this be a factor with regard to Phillipsburg and Belvidere?

A Well, I don't know but I am sure it probably does. The location, the people that live in between Phillipsburg and

Belvidere, it isn't that difficult for them to make a decision, I suppose.

Q How about the banks in Hackettstown or the bank in Hackettstown?

How many banks are there there in Hackettstown, do you know?

A I believe there's two, Hackettstown National and Peoples National.

Q Hackettstown, 25 miles away, how do they compete with Second National?

A I imagine they are in with dealer loans, dealer paper down there also. I'm sure they are getting their share of it.

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[fol. 163] Q How actively do you solicit any business?

A We don't.

* * * *

[fol. 175] Q Where are your customers taking their trust business now?

A I imagine most of it is probably going to Easton National based on what their trust assets are and I think they are in the neighborhood of $44 million.

[fol. 176] Q What is the basis of that estimate?

A Well, in comparison to what our trust department is. I'm sure that some of this must be going over there.

Q What is the basis of your estimate that their trust department is $44 million in size?

A I think that appeared in one of their published statements, if I recall.

Q When was your Roseberry Street Branch opened?

A I believe in 1961, if I recall.

Q Do you know anything about the cost of that branch?

A Well, I would be giving you approximated figures if I told you what I thought it cost.

Q All right. What is the approximated figure?

A It could be in the neighborhood of $200,000, but it's more particularly spelled out in our statement as to what we are carrying that building at.

Q Where would I get the information on the breakdown of the cost and how this amount is amortized, if it is amortized, and what it cost to equip the branch and so forth?

A Originally when we first set it up?

Q That's right.

A That would appear right on our statement when [fol. 177] we set it up.

Q That would appear on the statement?

A Yes.

Q That would be in which statement?

A I can get that for you.

Q Could you get that for us?

A Yes.

Q We don't have the 1961 statement and we would like to have it.

A All right.

Q Are you familiar with how the branch was paid for, out of what particular moneys the branch was created?

A You mean where did it come from?

Q Right. Did it come out of undivided profits?

A Yes.

Q Can a bank also take money out of its surplus account for this type of an expense?

A To construct a branch?

Q Yes.

A I don't know.

Q But this was taken out of your undivided profits?

A Yes.

Q You have indicated, Mr. Daubert, that in your [fol. 178] opinion the bank is unable to hire a commercial lending officer under its present status.

You do not believe that the bank can afford to do so as we understand your testimony.

A Yes.

Q I was wondering first whether this man would he hired, if he were hired, with the assumption that he would generate a certain amount of additional business.

Would that be a fair assumption if such a man were hired?

A That would be a fair assumption.

Q How much additional business would you estimate a man like that would have to bring in in order to justify his existence to the bank?

Have you ever figured that out?

A No, I haven't.

Q Would you think your undivided profits at Second National Bank which total $264,000 as of December 30, 1967 might be a possible source of an expenditure of this type to hire somebody with the expertise necessary to more fully develop the C & I loan business?

A The possibility is there that it could be done.

Q Mr. Daubert, some salary information has been provided for us in response to the interrogatories and [fol. 179] we are under the understanding that those figures do not include bonuses for the year 1967.

What I was wondering is whether or not your bank has paid bonuses at any time during the period 1962-1967 to its employees?

A Yes, we have. My figures should include bonuses.

MR. WEINBAUM: Off the record.

(Discussion off the record.)

MR. WEINBAUM: Let the record reflect that the information provided to us by the banks on salaries did include bonuses for the year 1967.

Q Have bonuses been paid regularly during the period 1962 through 1967 at Second National?

A Yes.

Q Can you explain how the bonuses are determined?

A Well, it is two weeks' salary. This is what it is based on for everyone.

Q Have you been a correspondent of Marine Midland, Manufacturers & Fidelity Union for some time?

A Yes.

Q There has been no change recently?

A No.

Q Are you familiar with the preparation of the [fol. 180] reports of condition for your bank?

A Yes.

Q Do you have anything to do with the preparation of the income tax returns?

A No.

Q Do you know whether or not the valuation reserves which are set forth on your report of condition are the same amounts which are allowed by the Internal Revenue Service on your tax return?

A Yes, they are.

Q Mr. Daubert, are you familiar with the circumstances surrounding the merger?

A I believe I am.

Q Were you a party at all to any of the initial discussions which may have transpired between the banks on the subject?

A No.

Q Are you familiar at all with who may have originated the idea of a possible merger between the two institutions?

A No. I assume this was between the directors of both banks.

Q Mr. Lester Pursell has testified at the Comptroller's hearing that one of the reasons your bank hadn't really gone out and looked for management for about [fol. 181] a year and a half preceding the merger application was because of the fact that merger discussions had begun.

I am wondering what efforts, if any, going back prior to that year and a half, what efforts were made in connection with the hiring and training of management people.

Do you know anything about that?

A I would rather that he would answer that question.

Q You have nothing to do with the hiring or training of personnel?

A I do, but you are referring to management personnel, aren't you?

Q Yes. You have nothing to do with that?

A No.

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[fol. 186] HAROLD J. CURRY, Sworn.

DIRECT EXAMINATION

BY MR. WEINBAUM:

[fol. 187] Q Mr. Curry, could you please state your address?

A 121 South Main Street in Phillipsburg.

Q Could you please tell us what your present position and responsibilities are with the Phillipsburg National Bank and Trust Company?

A My present position is President of the bank. I have charge of all the officers in the bank and all administrative duties of the President of a bank.

I also take applications for all kinds of loans that come into the bank, whether it is mortgage, commercial or consumer loan.

I help out in all respects in this small bank.

Q Mr. Curry, you have heard discussion today about the increasing commercial and industrial loan activity of your bank?

A Yes.

Q During the period 1962 through 1967 that is, and I was wondering if you could explain to us from the point of view of the President and Director of the bank what you believe to be the main reason for the increased activity in commercial and industrial loans.

A Simply because of the increase in activity within the whole area. There has been an influx of industry in the area. The area is growing and there is [fol. 188] a very definite demand for industrial and commercial loans that is a natural result of the growth of the area.

Q Is this a demand which just did not exist to any significant degree prior to, say, the 1962 period?

A Yes, sir.

Q So that it hasn't been any intentional change of emphasis on the part of your bank as far as this switch in your loan portfolio?

A No. Just the demand.

Q Might the same thing be said for your growth in installment loan activity?

That too has increased tremendously over that period of time.

A Our growth is because of the fact that we determined we wanted to get into the small loan business and we went out and hired a specialist, one that has been trained in the business and knows his way around.

Q When did you hire Mr. Stillo? Are we speaking of Mr. Stillo?

A Mr. Stillo, yes. It's about 5 years ago, to my best recollection.

Q Prior to the hiring of Mr. Stillo was the matter of developing this aspect of the business considered by the Board of Directors?

[fol. 189] A Yes, sir.

Q Was it felt by the Board that the best way in which to do this would be by hiring a specialist in the field?

A We did, yes.

Q Could you describe for us, Mr. Curry, a little bit more about the types of trust activity which you are presently engaged in?

A Our trust activity is limited simply because we do not have the personnel to develop it.

We think we have a very capable person handling the limited amount of trusts that we do have but we do feel that with the bringing in and competing for trust business which we know goes out of Phillipsburg, some as far away as Philadelphia, we could do a better job and provide the service that is needed by the community.

Q What would you need in order to provide what you would believe to be adequate trust service for the people of the community?

A Someone that has been trained in it, that it has been his or her specialty, who could sit down and talk with prospective clients about the various types of trusts, the various types of living trusts and all types of fiduciary accounts that could be developed by someone with the proper experience. This we don't have. [fol. 190] We haven't got the person to do this.

Q The person who is handling your trust business is Miss Taborelli?

A Yes.

Q In your opinion, does she have the capabilities, assuming she were to work full-time at it, to develop trust activities more fully than she has been?

A No. We think she is capable in the field in which she is working but beyond that she would not be capable of developing a trust business.

Q In your experience, Mr. Curry, is the trust aspect of a commercial banking operation a profitable one in and of itself?

A Yes, if it is properly developed and you have the assets to develop the income, it could be a very profitable business.

Today banks are acquiring persons who could develop this business in a profitable field.

Otherwise the banks in the business wouldn't be in it today.

You will find that a big portion of the city banks come out of their trust departments.

Q It is not a fact too that the trust business is a way of cross-referencing to other types of banking business?

[fol. 191] A Oh, definitely. We have a couple of trusts here now in which we have customer relationships that we never had before.

Q Which grew out of the trust business?

A Out of the trust business entirely, savings account, checking account, safe deposit boxes, all because we are appointed executor or trustee in some manner.

Q Now is Easton National Bank the principal commercial bank close at hand which has any sort of a trust department?

A They have one of the better trust departments in this western part of New Jersey or the eastern part of Pennsylvania, yes.

They have developed a very capable trust department.

Q Has the Board of Directors ever given any thought to hiring a trust specialist?

A No. We have never discussed it to any degree because we felt in this sense that the only way to develop it is to hire a specialist but we have never done it. We have discussed it.

Q You have discussed it?

A Yes, we have discussed it.

Q Did you ever explore the financial feasibility of doing so?

[fol. 192] A No.

Q You never went into it in any detail?

A Not to that degree, no.

* * * *

[fol. 193] Q Can you explain the type of competition, Mr. Curry, that you have experienced from the banks in Bethlehem?

A Well, the banks in Bethlehem, one in particular was very active in this field and did an awful lot of advertising in our area and we know but just can't place names or give names but we know that they are active in the field.

You go over here across the river and you see the First National Bank of Bethlehem with a big billboard advertising on 611 automobile loans, the same type of competition that we are getting from the Easton banks with billboards all around us, as was mentioned here, with automobile dealers,

floor planning, where they floor plan, and they get the consumer paper.

So we do have direct competition from all phases. We do have direct competition from trust departments and I can mention one bank in Bethlehem that got a trust and [fol. 194] it was supposed to go there—well, maybe I can qualify it a little bit.

We were offered it. We couldn't handle it and it was to be offered to the First National Bank of Bethlehem because there was an attorney involved in this thing that came out of Pennsylvania but we could have had the trust.

Q Is First National Bank of Bethlehem the particular bank that you were referring to?

A No. The Union Bank and Trust of Easton, Pennsylvania is the bank that was our greatest competitor.

Q Of Bethlehem, Pennsylvania?

A Yes. This is where we got Mr. Stillo.

Q You say they were here. Are they still actively engaged in Easton or Phillipsburg soliciting customers?

A Yes, so far as we know. They tried to get a branch in Palmer Township.

I don't know whether that was mentioned this morning. That was a branch where the Lafayette Trust Bank beat them by one hour, so that's how they were coming down into this area.

If they had been here we would have still had this terrific competition, but they got into Harrisburg an hour before the Bethlehem bank did and the Lafayette [fol. 195] Trust Bank got the branch out in Palmer Township.

Q Are their rates comparable to your rates?

A Yes.

Q Except on savings accounts?

A Except on savings accounts.

Q They pay 4 percent?

A 4 percent on the passbooks, the savings books, yes.

* * * *

Q Is it easy for a bank in Bethlehem to do business at a distance like that where they do not have a branch in the community?

[fol. 196] A Yes, I think it is. One of the big effects of the automobile is the fact that you can leave Phillipsburg here

and be in Bethlehem in 15 minutes or close to 15 minutes, right in the center of Bethlehem where you could conduct your business and have no problem getting there.

Q You can be in downtown Bethlehem in 15 minutes?

A Yes, if you go 60 miles an hour.

* * * *

[fol. 198] When we were paying 3 percent here the banks above us and all around us went to 4 percent.

When you go to 4 percent above 3 percent, you develop a greater competition for savings.

Q What we don't understand is why if this interest rate factor is so important, why you don't derive more of your business from Easton than you do in the time and savings account category.

A Well, I would say it is because this one-half of one percent differential doesn't mean this much, especially on the smaller accounts.

When you get into thousand dollars and $10,000, and today with the $15,000 guarantee, there is a great movement of savings for at least one percent more.

* * * *

[fol. 200] Q What kind of competition do you face from the banks in Belvidere and Washington?

A The same as I mentioned a moment ago. They pay a higher rate of interest than we have and they were paying 4 percent when we were still paying 3.

Since we went to 3½ I don't think there is that great a drain.

Q How long ago did you go to 3½?

A About 7 years ago.

Q So that at least for the last 7 years you don't know to what extent there would be an outflow of savings business?

A I don't think it is as great as it had been.

Q Can you tell us a little bit more about the competition that you are facing from the banks in Bucks County?

A The biggest competition is from the Gerard Trust Bank of Philadelphia. They advertise 5 percent, 10-year guaranteed bond if it is left there for the full ten years, they will get a return of 6.1 or something of that sort.

[fol. 201] It's a fraction above 6 percent.

They also permit you to withdraw on certificates or not certificates but this type of deposit without losing any interest so that you are not fully tied in with 10 years.

Ten years is to develop a thought that they can earn more than 6 percent by accrual or compounding the money that is left there.

Q You can withdraw at any time?

A You can withdraw certain periods without loss of interest, not the compound interest but the straight 5 percent.

I think you will find that in their contracts.

Q Is your principal competition, what you believe to be your principal competition from the Gerard Trust Company in this area of savings or C.D. money?

A No. I think they do service a lot of mortgages in the area below us, beyond Alpha, in Alpha and all in this area which would be normally in our business area because of the fact that they have accounts in the Gerard Trust Company.

This is one of these compensating businesses or compensating side effects of doing other business.

Q You mean one type of business leads to another?

[fol. 202] A It develops into another.

* * * *

[fol. 203] Q Is there an inclination on the part of Easton business people to do business with the Easton banks?

A Yes, definitely.

Q I imagine conversely, there would be an inclination in Phillipsburg for business people to keep their business on this side of the river?

A Pretty much so.

* * * *

Q Who are some of your dealers up there at the [fol. 204] present time?

A Well, in Allentown we have the Allentown Bar & Supply and they have given us some business. Penn Aluminum Supply is another one and I believe they are from Allentown. That's about all I can think of at the moment on that score.

Q How about Bethlehem?

A I can't think of anyone individually. Mr. Stillo could probably answer that question better than I can.

Q Can you explain how you compete in the area west of Allentown, in Lehigh County?

A Well, a good bit of the business that we get in Allentown, Lehigh County above Allentown, is originated right here in our own industries in the sense that we may have helped Baker and Shahmoon Industries and Ingersoll-Rand are constantly bringing people out here from New York or other areas and they will ask someone who has been in the area for sometime where they should go to get a loan or a mortgage loan, that they want to buy a house.

Through this method we do get applications for mortgages here and beyond in Allentown and we did do quite a bit.

We have had some VA and FHA mortgages in Allentown simply because we were the only people in the business [fol. 205] and individuals had been brought in here and had to have GI or VA mortgages to buy a home or I should say FHA or GI mortgages.

Q In Warren County do you pretty much cover the county as far as your solicitation of business is concerned?

A The same thing applies to Warren County. As far as mortgage loans are concerned, which would include all phases of mortgage loaning, conventional, FHA or GI, we have had a rather wide area covered because we were the only participant in the GI mortgage and the banks out in the county would send applicants here.

The same thing applies to FHA. In this way we did develop business out in the county.

* * * *

[fol. 212] Q Has your lending limit posed a serious competitive handicap to Phillipsburg National Bank?

A Yes.

Q Can you explain how, please?

A Yes. We have lost several accounts because of the fact that we were not able to grant the amount that was necessary and sometimes in trying to get participation—I can name a couple of instances—in trying to get participation we got snagged and in the meantime the manufacturer became impatient and went to one Easton bank in particular and they

went to a bank that was a correspondent of ours and they got the participations from our correspondent where it should have gone in the first place.

These are the things it developed.

Q Isn't it so though, Mr. Curry, that problems arise in a very small number of instances with respect to your inability to handle a loan either by yourself or through a participation?

A I would say it happens more than just sporadically. We do run into the lack of our capital in granting the loans and we have had to shop around on several occasions without very good results.

Q During a 4-year period from 1964 to 1967 it is indicated that you had ten participations and it is [fol. 213] estimated that you have about 25 requests a year in excess of your lending limit.

Does this seem about right?

A Just about right.

Q That some of these requests in excess of your lending limit, we have had it said, you wouldn't be interested in granting the loan anyway even if you did have the lending ability?

A It's possible, yes.

Q Isn't it a fact that the greatest bulk of your lending activity is in the $50,000 and under category?

A Yes.

Q So that the lending limit wouldn't enter in as far as those loans are concerned?

A No.

Q Mr. Curry, to what extent have you found a businessman in Phillipsburg would turn to Easton for his credit needs when he has found difficulty in getting loans in Phillipsburg?

A What is that?

Q Is Easton the first place he will generally turn?

A Yes. He will turn to Easton first if he is not able to obtain it here.

* * * *

[fol. 217] Q Has any thought been given to hiring a full-time lending officer or having Mr. Varga devote his full time to the lending operations of the bank?

A Yes, we have given that some thought. We have several thoughts in mind in that respect.

A lending officer that we need very badly in our institution, and if we had a merged bank we would need him more so, would be a mortgage loan officer, someone [fol. 218] that has been trained in appraising and also developing mortgage loans that could handle our whole mortgage loan portfolio and not depend upon directors to make our appraisals.

The same thing holds true with commercial and industrial loans.

If we had a man who could devote himself to that entirely, the same as we have brought in Mr. Stillo, we would probably be able to develop a better commercial loan business.

At the same time if we had to bring in a man of that caliber we would have to pay him a lot more than we are paying right now to some of our own officers.

Q Assuming the merger were found unlawful would you be able to go out and hire these people?

A No.

Q You couldn't afford it?

A We couldn't afford it.

Q Even taking into account the fact that these people would generate more business for you?

A I don't think they could develop or I don't really believe they could develop that much more business in the area for our bank as a unit.

Q Why would you need them then if you remained an independent bank?

[fol. 219] A We probably wouldn't need them. I should probably restate it to say that if we had to get in somebody to develop this type of business or give it to Mr. Varga we would have to also bring in at the same time another officer to assist on our floor down here to interview other people that I am interviewing that I wouldn't be able to handle altogether by myself.

We handle a tremendous amount of all kinds of loans and I guess between the 3 of us we divide the work quite equally.

Q How long a period of time do you think it would take before a specialist in the mortgage field was paying for himself, so to speak?

A In our own bank?

Q Yes, if you went out and hired a man, apart from a merger.

A Well, we would probably have to take 4 or 5 years.

Q How about a commercial lending officer?

A The same thing would hold true there.

Q In your opinion, does your volume of business in the commercial and industrial lending at the present time justify the hiring of a commercial lending officer?

A No, but I think we have to look forward to development of this area which we find from talking to the [fol. 220] utility people, there is going to be within the next 4 to 5 years a tremendous influx of business as well as population, and with the completion of I-78 and I-80 above us here, the Tocks Island Dam and the fact that up here along the Belvidere Road there have been several thousand acres of land purchased, and that is what you might call Sub Rosa, we don't know who is buying it and we have not been able to find out anything about it but these are the things that are developing and we feel certain that within the next 4 or 5 years there will be much movement of industry into the area as well as population which would naturally follow.

* * * *

[fol. 223] Q Should the banks be allowed to merge, would you postpone the hiring of a commercial and industrial lending officer because the demand was not there?

A With the banks merging we would have enough volume in the two banks of commercial and industrial loans now that might be helpful in maintaining a specialist in this field and allowing him then to go out and develop other loans.

Q As we understand it then from what you are saying, the addition of an additional 1.3 million dollars in C & I loans, which is what Second National has at the present time, that difference would justify the hiring of a commercial lending officer?

A Combined with ours?

Q Yes, combined with yours.

A It would help us carry the load, sure, for a couple of years that we couldn't do now individually.

* * * *

[fol. 224] Q Well, Mr. Curry, between 1962 and 1967 your business has grown in that 5-year period 1.8 million dollars in the C & I loan category.

Can't we assume that it would continue to grow like this?

A I don't think so. I don't think there is that much business in the area to support it.

Q Yet from 1962 to 1967 it has grown like that?

A It has grown, yes.

Q And now there is a tapering off?

A There is a leveling off. It has reached its plateau.

Q So that if you remained independent there would be no need to hire a C & I loan officer?

A No, sir.

Q And Mr. Varga would be able to conduct this business adequately?

A All of us together, Mr. Varga, Mr. Rittenhouse [fol. 225] and myself.

* * * *

[fol. 226] Q Now if the bank were to remain independent you definitely feel that the hiring of a mortgage lending officer would be advisable?

A Eventually it is a possibility. I don't know whether I might say advisable or not but it is a possibility.

Q It isn't something you would do immediately?

A No.

Q What about the hiring of a trust officer, a full-time trust officer again in the event that the banks did not merge? [fol. 227] Would this be the type of thing which the bank would want to do in the immediate future?

A No, we would not do that in the immediate future.

Q Is it something you would consider doing at some subsequent time?

A At some subsequent date we might, yes.

Q As the potentiality became more apparent?

A Yes, as it developed.

Q Mr. Curry, would you be able to make available to us the available information on what your costs were in establishing your two branches?

A What do you mean, what it cost to establish the branch, just establish it?

Q To erect the building, to lease the property.

A Well, up at Hillcrest we lease the property. The equipment in it is ours.

Q Did you lease that with a long-term lease?

A 20 years.

Q What do you pay for that lease?

A $13,000 a year, I believe is the correct amount.

Q And you purchased the equipment?

A We purchased the equipment.

Q How much did the equipment cost?

[fol. 228] A Somewhere around $100,000 or $120,000.

Q How about the construction of the building? Well, you leased it.

A The only thing or the only part of the construction that we had to pay for were the counters and all this sort of stuff.

Q And that was included in the equipment?

A In that cost, yes. The same thing would hold true with Alpha, about $150,000 on both the building and equipment.

Q And the Alpha Branch was opened when?

A August of 1964.

Q And the Hillcrest Branch?

A I think our official notice was either late in December 1963 or early 1964.

Q How do you pay for the equipment that is put into the branches?

A We capitalize it.

Q Over how long a period?

A Ten years generally for the interior and the machinery.

Q Where did the moneys come from for paying it off?

A Out of our cash.

Q Is that the undivided profits account?

[fol. 229] A Well, you could assume it is the undivided profits but our undivided profits didn't lessen any except by the amortization or the depreciation from our earnings.

Q So that you paid for this out of the cash account?

A Yes. It was just transferred to cash, one debit to equipment and buildings.

Q I'm sorry, Mr. Curry, I am not well versed in accounting but what account would that money come from for these branching expenditures?

Looking to the balance sheet here where would it be?

A On here on the balance sheet it would show under bank premises, furniture and fixtures.

Q I see. Where did that come from?

A A good bit of this or a good portion of it is still on this building and its contents that had been spent years ago.

Then the other additions, this right now is the depreciated figure over the past—well, we remodeled this building about 11 years ago and we put a lot of money into it then and we were down to almost nothing.

Q In where, in the depreciation?

A In this whole thing here. This is the depreciated [fol. 230] figure.

Q Now should you want to establish a new branch say a week from now what figure on this balance sheet would you look to?

A Up here, the cost of the building and whatever transpired in your cash position or whatever securities you have and you might let securities run off.

This is a capital expenditure.

You don't necessarily decrease your undivided profits or anything except from the fact that you are putting into here earning assets and because of that, taking it out of your operating money, you do cut down your earnings for the time being.

Q Your undivided profits are earnings assets?

A They are earnings that you have accumulated, that the bank has accumulated over a period of years.

Q When you don't look to the asset portion of your balance sheet for moneys for these expenditures you could look at your undivided profits, for instance?

A You could look at that but at the same time there is a regulation by the Comptroller's office that will not permit you to put more than your capital into this up here.

They haven't changed that, I don't think, so that you can't expend too much to capital.

[fol. 231] Another thing too is that if we did establish a branch, necessarily over a period of time your undivided profits would be affected.

Q Because it would be necessary to take money from there?

A Cash out of your operating figures.

Q So that in 1963 you made these expenditures for the two branches?

A 1963 and 1964.

Q You remodeled this building 11 years ago?

A Yes.

Q Approximately that?

A Approximately that, yes.

Q At what cost, do you know, approximately?

A That went well over $100,000 at that time.

Q Were the dividends of the bank affected at all by that expenditure?

A No. We never cut our dividends, if that's what you mean.

Q You have never cut your dividends?

A No.

Q You have always had sufficient moneys to provide for these improvements?

A Yes.

Q Both for the improvement of this office and [fol. 232] for those two branches?

A Yes.

Q Mr. Curry, could you outline for us the events leading up to the merger agreement which you have entered into with Second National Bank?

A Well, prior to our being aware of the merger, Mr. Smith and Governor Meyner had discussed it for a short period of time with the idea and objective of merging the two banks and then eventually it was brought to the Board of Directors for consideration.

Q Were you a party to any of the initial merger discussions?

A Not between Mr. Smith and the Governor, no.

Q Is it correct that the first time you gave consideration to the merger that time at which some sort of a proposal had been formulated for the consideration of the Board of Directors?

A No.

Q At what stage did you become familiar with it?

A The Governor brought it up in our Board stating it with this thought, that a merger between Second National and our bank might be good for both banks and the community.

Q How far back does this go, do you know?

A About two years or better.

[fol. 233] Q Around the Spring of 1966?

A Yes, it has to be because as I recall it, we started out in September of 1966 on our first proposal, if I am not mistaken, the call reports.

Q Mr. Curry, at any time during these initial or subsequent discussions of a proposed merger between your bank and Second National was any consideration given at all by your Board of Directors to approaching any other potential merger prospects?

A No, sir.

Q Has your bank ever been approached by any other banks on the subject of a proposed merger?

A Not that I am aware of.

Q Have you or your Board or any other officers of the bank made any efforts since the time that merger discussions began to explore the possibility of hiring additional management personnel?

A We have given it some thought, not any great effort because in looking to the type of—well, the only personnel that you can secure in this area are females.

We have endeavored to work with the schools but we can't get any boys in for training out of high school. They are not interested.

When you discussed salaries with other banks of our [fol. 234] size and nature we find that in a good many instances or in most instances we are very much below the scale.

Q Can you give me specific instances where your salaries are below the scale of other banks of comparable size?

A Mostly from discussions with other bankers. I have discussed it so often I just can't or don't want to pick on any one banker individually but we have found in our discussion or my discussions with other bankers and with the city bankers that when you talk about hiring men you are going to have to pay to get a man into this area a much larger salary than we are paying some of our people right now.

Q But you are indicating that outside the big city areas, for banks of your size in similar small towns your salaries are lower than those of banks in other small towns?

A Yes.

Q Are you talking about towns in New Jersey?

A Well, yes, in New Jersey, in our same district.

Q In Warren County?

A No. In banks of deposits and loans in the same category in the same area, a $20 million to $25 million bank.

Q I see. In that size category your salaries [fol.235] are lower?

A Yes. I know one instance here right in our own area where they recruit students in good business colleges that they start them out with anywhere from $8,000 to $10,000 a year just to start.

Q A bank in this area?

A Yes.

Q What bank is that?

A Hunterdon County National. They have a great recruiting effort.

Q That bank is outside your size category, isn't it?

A Yes.

Q That is about a $37 million bank?

A Yes.

Q So that it wouldn't be fair to compare them, would it?

A Except in the sense that if we are going to start to talk salaries you have to start at this level.

Q Do you know for a fact and can you cite specific instances where banks in your size category have salaries that are higher than your salaries?

A No, I can't do that. I can't review in my mind where they might be.

Q Have you made any effort at all though to go [fol. 236] out and hire officer material?

A No.

Q Was one of the reasons the fact that a merger conversation was taking place?

A No. This has been one of our problems for some period of time, to get management succession.

Q What efforts have you made to do so?

A Nothing in recent years.

Q And the problem has been augmenting for about 20 years, is that right?

A Yes.

Q Is Mr. Stillo the sole officer that has been hired in recent years?

A Yes.

Q In view of your prior testimony, however, you have indicated that as far as additional types of personnel are concerned, if you were to remain an independent bank you would not see the need immediately to hire either a trust officer or mortgage officer or commercial loan officer?

A No.

Q Mr. Curry, I would like to talk just a little bit about your accounting department.

Can you tell us a little bit about the type of machinery that you have in that accounting department?

[fol. 237] A Yes. We are fully National Cash Register. We have the Postronic posting machines which are to a degree automatic.

We also have a proof machine for all our items that go through the bank each day. This is the extent of our automatic equipment.

Q How long have you had this equipment?

A Our posting machines I would say one might be at least ten years old and the other is 7 or 8 years old anyhow.

The proof machine is about 3 years old, maybe not that long, maybe a little less.

Q Can you give us an approximation of what it has cost you to put in that machinery?

A What we have now?

Q Yes.

A It's so far back I wouldn't know but I know today that it would be rather expensive for us to put in the kind of equipment that would be necessary to semi-automate the place.

I don't have the figures because I don't deal with that.

Mr. Rittenhouse could tell you that or Mr. Varga. I can't answer the ultimate cost.

* * * *

[fol. 239] Q Mr. Terrill is your chairman?

A He is inactive.

Q Does he spend any time at all at the bank?

A Only when we call him. He is one of the mortgage appraisers today for us.

Q He is on the payroll, however?

A Yes.

* * * *

[fol. 240] CROSS EXAMINATION

BY MR. WATERS:

* * * *

[fol. 241] Q Now you spoke in general about the commerce between Phillipsburg and then Easton and Bethlehem and out to Allentown.

Is there also a great deal of commerce in terms of people doing their shopping and traveling back and forth?

A To Allentown?

Q Out towards Easton, Bethlehem and Allentown.

A Oh, yes. There is a tremendous flow of traffic from Phillipsburg and if you go up there, as we do occasionally, Hess Brothers and that big shopping center up there, there is a tremendous number of Phillipsburg or Jersey people that travel up there.

The same thing is true where you get some coming this way also from Easton to do their shopping over here in the Hillcrest Shopping Center.

Q So that many people travel from Phillipsburg to Bethlehem and Allentown for reasons other than just their place of employment?

[fol. 242] A Oh, yes. I thought I pointed that out earlier, that the automobile doesn't limit the trade transactions.

You can get there in a hurry.

Q Now in terms of the competition with banks in Blairstown and Hackettstown, you spoke briefly about banks in that area coming into your area for people in your area.

What about people that are situated between Phillipsburg and the Hackettstown and Blairstown area?

Isn't it a reasonable alternative for them to go one way or the other for their banking needs?

A That is true.

Q Now in terms of the flow between Easton and Phillipsburg and the activities of businessmen in both cities is there not a tremendous interchange in business activity between the two cities as a course of banking activity as well?

A Yes.

Q You also spoke briefly about the ability of Phillipsburg National to handle loan business in some of the more distant portions of the area in which they trade.

What about Phillipsburg National and Second National as a merged institution? Would they be better able to [fol. 243] handle activity in the more distant areas?

A Yes, I think they would because we would have more leeway in making loans.

We would have a greater capital structure and therefore a greater potential for larger loans that we are not able to handlenow as individual banks.

* * * *

[fol. 25] Q Do you think it would be more feasible for Phillipburg National and Second National combined as one institution to hire one or more of these specialized officers?

A I think it is possible there, yes, because of the fact that we could develop a greater loaning capacity and be able to service the loans that we are not able to service now and bring in a specialist in the commercial and industrial field who has majored, we might call it, in that kind of loaning procedre in a bank where he has a background which as individals we don't have in the sense that Mr. Varga or Mr. Rittenhouse or myself, we handle these things and then we have consultations.

In the other case we could bring in a man that is quite familiar with all phases of this kind of loaning and we would have this taken off our shoulders.

Q Well then, isn't it true that although you have said it isn't feasible in terms of cost to bring in these specialized officers that even though it isn't feasible at this juncture the banks do need more management help?

[fol. 26] A We do need more management help. We are not in a position right now to develop it and in a year or two we are going to be faced with more management and better management than we have now in these specialized fields.

* * * *

REDIRECT EXAMINATION

BY MR. WEINBAUM:

Q The fact of the matter is though, Mr. Curry, you have not gone out and made any active attempt to fill these gaps which have been growing?

A No, sir, we haven't.

Q And you haven't done this for at least a couple of years?

A No.

RECROSS EXAMINATION

BY MR. WATERS:

Q Isn't the reason that you haven't gone out and attempted to fill these gaps because, as I think you indicated in your direct testimony, you know the cost of bringing in these kind of people and you know you can't [fol. 247] afford it?

A This is it, yes, definitely.

* * * *

REDIRECT EXAMINATION

BY MR. WEINBAUM:

Q The only further question we have, Mr. Curry, is that in view of the bank's history of being willing [fol. 248] to make expenditures, to modernize, to establish branches, is it not just as reasonable to assume that you will have to at some point, if the merger were not allowed, undergo some substantial expenditures in order to attract competent, able people to insure the future success of your bank?

A It's quite possible, yes.

* * * *

CROSS EXAMINATION

BY MR. ROACHE:

Q If this merger does not go through do you feel that you will be able to keep up with the economic growth of the area?

A No.

Q Do you feel you won't be able to serve the people in the area the way they should be served?

A No. We will have to develop the proper kind of management or bring it in from somewhere in order to service the area.

With the merger of this nature we can afford to bring in the right kind of people.

Q Then is it your plan after the merger to do this?

A Yes.

* * * *

[fol. 250] LESTER D. PURSELL, Sworn.

DIRECT EXAMINATION

BY MR. AUSTIN:

Q Mr. Pursell, would you please give us your home address.

A 59 Shultz Avenue, Phillipsburg, New Jersey.

Q How long have you been employed by Second National Bank?

A 47 years.

Q How long have you maintained your present position?

A About 4 or 5 years as Executive Vice President.

Q That position is Executive Vice President?

A That's right.

Q Would you please enumerate for us some of your major duties or responsibilities in that position.

A In this position now?

Q Yes.

A Well, while we are a smaller bank my duties are probably not like in a larger one. Our duties are different jobs in the bank.

It isn't any particular one. I do most of the trust work, some of the administration work, some loaning but not too much of the loaning, hire personnel occasionally.

[fol. 253] Q To what extent do you feel that Second National is directly competitive with other commercial banks headquartered in Phillipsburg and Easton?

A Well, I wouldn't say it is too highly competitive. Personally I think that a lot of this business here is of small town and a lot of our connections are probably from the individual standpoint, especially loans and stuff like that, that we have friends that know one or the other in each bank and that draws a lot of them.

Maybe cost-wise and other things I think we are not in a position to give any bargains or anything like that, that we both have pretty near the same schedule.

I think this is the answer there as far as that goes.

I mean, we are not competitive where anyone would be going out and giving any different rates or anything on savings or anything.

I think the whole area is pretty much the same way myself.

* * * *

[fol. 254] Q To what extent then do you compete more specifically with the Phillipsburg Trust Company here in Phillipsburg?

A Well, I don't think there is any strong competition with them any more than anyone in this area. There is no keener competition with them than anyone else.

* * * *

[fol. 266] Q From what geographic area does Second National derive the vast bulk of its business?

A Well, the vast bulk I would say is locally, while we have it in outlying districts which might go as far as all through the county and even over on the Pennsylvania side and we have a few out in the outlying districts but not of any volume.

Q Perhaps we should define what we mean by vast bulk of your business because the answers to our interrogatories show that in demand deposits, Second National derives about 80 percent of such deposits from [fol. 267] Phillipsburg and environs and about 9 percent from Easton and environs as those areas are defined in our answers to your interrogatories.

Would you regard these percentages as indicating that the bulk of your business is done within the Phillipsburg-Easton area?

A Well, the vast majority, sure. The figures show that.

As I say, not only that but we do have some that are from distant points but not any big quantity of them.

We do get deposits which are not confined only to this strict territory where they bank by mail at distant points and, of course, another thing is the automobile which we get a lot of that which we never had before.

Actually all of it is not confined here but we have to admit that the biggest portion is.

* * * *

[fol. 269] Q In view of your statement that the savings and loan in Easton pays a somewhat higher rate of interest on savings deposits, why do customers come to you for the purpose of making such deposits since higher rates are available in the immediate area?

A Well, this is pretty hard to say. I would say that while it isn't everybody, as I said before, we have a certain amount of prestige here with people who know us and this is a small community and I would say they maintain the savings account for that and unless it would be a sizeable amount, maybe they get more on that than we would.

See, there is no way for us to tell what is actually going there in monthly deposits unless we can pinpoint some way where we get some sizeable withdrawals that are taken there but over the span of years and from the size of their growth they surely have taken from over here.

Q Looking at Second National in terms of the totality of services to the public, do you feel that there is an element of one-stop shopping involved in customers dealing with you as opposed to dealing with the savings and loan institution in the category of savings deposits?

[fol.270] A This depends on the individual, I think. If he is a shopper for interest he is going to go there.

Q Do you feel that a one to one and a half percent difference in interest paid on savings deposits is a substantial factor in the decision of a customer to make a savings deposit with a commercial bank as opposed to a savings and loan institution?

A Well, this would depend on the size of the deposit, I would say, whether one-shot shopping is going to be that much more advantageous to him to go there I don't know but I would say that where the individual has a smaller savings account he would probably stay with us at this one-half percent less but where it is a sizeable one then there might be a difference of opinion.

Q Does Second National regularly loan money to financial institutions such as the ones we have just mentioned, that is, savings and loan, finance companies, consumer sales companies?

A The only thing we do occasionally is building and loan. That's about the only thing on that, not finance companies. We have never loaned to the finance companies.

Q You do loan money to building and loans?

A Building and loans occasionally where the demand [fol. 271] is a very short duration.

They might be short of a few thousand dollars for a period when a particular series is running out.

Maybe it would be for a couple of months or 3 months or something like that.

It's a very short duration usually.

* * * *

[fol. 272] Q Turning to the question of successor management at Second National, what efforts were made by you or any other managing officer at Second National to recruit successor management for Second National over the past five years?

A We have done very little, in fact, none, as far as that is concerned, because we have always and it has been the plan evidently for management to come up through the ranks in Second National and it is pretty hard.

We have promotions through the ranks but within the last few years it has even been hard to get any male help to even get interested in a job here, which [fol. 273] we have been forced to take females and there are not too many of those around.

We have tried to keep in touch with the high schools and business colleges without too much success as far as going out and picking out people for an officer, which is pretty high for our institution.

Q Turning to the question of trust services offered by Second National and other commercial banks in the Phillipsburg-Easton area, may I ask this?

Turning to the question of trust services offered by Second National would you say that there is at present a substantial demand for trust services in the Phillipsburg-Easton area?

A I would say there would be a possibility of developing it. We have never taken that stand.

In fact, we have never had any trusts for years and years until the last 3 or 4 years that we have had a couple of sizeable ones and up until that time we have had nothing.

Here again there is a possibility. Even in the county around here there are only one or two banks that have it that I know of and not large at that.

I think there is a possibility of developing it.

Q Is it my understanding that as far as you are aware there is not presently a substantial demand [fol. 274] for trust services in the area?

A Not the way it is being promoted by us or anyone locally.

We don't go out for it. The only way that we possibly get it is probably through an attorney once in a while.

If a good trust officer was able to devote his time to it and develop it I think there are possibilities in the county.

Q Are you saying that you plan to generate the demand for trust services?

A Well, if the merger would go through I would say that there would be a possibility there but as each individual bank it wouldn't pay either one of us to go out and get a trust officer at the present time.

We couldn't afford to pay the salary they demand.

Q Based on the present volume which is relatively modest at Second National?

A Right. It is very small. The earnings wouldn't even permit paying a decent salary because all we do is spend 10 or 15 percent of the time on that or not that much maybe.

Q If you say that there is not presently a substantial demand for trust services in Phillipsburg-Easton, what greater justification would there be for [fol. 275] hiring a full-time trust officer after the proposed merger is consummated?

A This is projecting from what the possibilities might be. Even at the present time with a combined trust department of the two banks it would warrant probably somebody that is more versed in trust funds than I am, somebody that is capable of going out on the road he ought to be able to pick up quite some business I would think.

Right now we are not soliciting any more than what comes along naturally from the lawyer's standpoint.

He gives us one once in a while, so we don't develop it.

Q Did I understand you to say that even should the merger be consummated you would not or you do not anticipate hiring a full-time person?

A No. I would say if it should then you could develop it and afford to pay a trust officer a fair salary.

I think it is possible to develop it because with a combined trust department of the two banks here which wouldn't be too big but there is a lot of trust work that could be had if it was solicited.

* * * *

[fol. 285] Q Now in terms of Second National's efforts for recruitment of new personnel, you have indicated a lack of emphasis on this in your testimony.

Is this because you do not feel that the bank can afford to hire competent management personnel at the present going rates?

A That's right. We are a small institution. From what we could find out salary-wise it would be a problem for us.

MR. WATERS: That is all that I have.

CROSS EXAMINATION

[fol. 286] BY MR. ROACHE:

Q As far as the C & I loans are concerned you are very small in this field?

The percentage of the business you do is very small, isn't that right?

A That's right.

Q You have not concentrated in this area?

A No.

Q A large percentage of your business is in mortgages?

A Yes.

Q Do you feel that you are a factor at all really in C & I loans?

A No, I wouldn't say we are. While this percentage of increase as he stated might have advanced that far I don't think we consider ourselves as such.

Q Would you say in effect you are so small in this field you have never given thought to hiring a man specialized in this field?

A That's right.

Q In answer to direct questioning you said that you felt that you were far behind the other banks in installment loans, is that a correct statement?

A Well, to this extent: We are probably the smallest one in this immediate vicinity due to the fact [fol. 287] that we have never concentrated on it and we have never tried to build it up.

Q Is it your belief that you are so far behind now that it is almost an impossible task to catch up to the rest of the banks?

A Well, it is going to be a problem to catch up with the rest of them unless you have somebody that is capable and you are big enough to go out and concentrate on that type of thing.

Q You are not big enough to do it?

A I don't think so myself.

Q If you are merged do you think the resultant bank would be more able to be a bigger competitor in this field?

A Right, I would think so.

Q You are very large in mortgages. Perhaps over 70 percent of your business is in mortgages, is that correct?

A That's right.

Q How far do you go in the surrounding area in lending money for mortgages?

A Well, we have gone as far as Bethlehem and Allentown and some of the outlying districts, not the big volume but we have to a certain extent, maybe 25 miles.

Q Warren County?

[fol. 288] A Yes.

Q All parts of Warren County?

A Yes.

Q Even as far as Hope?

A Yes, Belvidere, Washington.

Q What about Hunterdon County?

A We have some in Hunterdon County, yes.

* * * *

Q Also as far as the Trust Department is concerned the percentage of the business you have in the [fol. 289] Trust Department is practically negligible, isn't that true?

A That's right.

Q It would almost be ridiculous to think of hiring a trust officer to handle this kind of business?

A I would think it would be, very much so.

REDIRECT EXAMINATION

BY MR. AUSTIN:

Q If I recall correctly, you testified that Second National has not made any direct efforts to recruit either successor

management for your senior executives or to recruit new management to expand the amount of business that you have done in areas such as installment loans, commercial and industrial loans, et cetera?

A That's right.

Q Do I understand further that in answer to Mr. Waters' question on cross-examination you testified that you discovered that salaries of personnel to fill these positions would be prohibitive from Second National's standpoint?

A I would say Yes.

[fol. 290] Q May I ask in light of this what sources did you contact in order to learn this?

A Well, we have not made direct contact with any one individual anymore than in a general way, I would say probably, maybe the larger banks or in a casual way we have brought up salaries and from looking at the different services and the different letters we get about salaries from the people in the city coming in, we couldn't even touch those salaries, which give you a quotation on what they want as salary to come out as even a junior officer.

Q Am I to understand that you have in fact made attempts by way of letters?

A No. What I mean is we get letters from different services, like Snelling & Snelling, specialized service and we get letters out here once or twice a week with a listing of different officers who are interested in jobs and stuff in a bank or something like that and the salaries they quote on there are just out of our line.

We couldn't even think of it. These are qualified men who have had some years of experience.

This is just sent to us. We don't solicit it. We haven't asked for these letters.

[fol. 291] BY MR. WEINBAUM:

Q Mr. Pursell, you have not actively gone out and looked for management?

A No.

Q And it has been your intention all these years to provide for successor management out of the ranks of your bank?

A Yes, that has been the plan for years.

Q Now if this merger is not allowed what will Second National Bank do to obtain new qualified younger management?

A This is a must. We will have to do something, I would say, within the next year or two because the senior officers and some of the older employees are getting quite old in our institution.

* * * *

[fol. 3] HARRY S. PURSEL, Sworn.

DIRECT EXAMINATION

BY MR. WEINBAUM:

Q Mr. Pursel, could you please tell us what your residence address is?

A 401 Ohio Avenue, Phillipsburg.

Q You are the president of Second National Bank of Phillipsburg?

A Yes.

Q How long have you held that position?

A Since 1956.

Q You are a member of the board of directors of the bank?

A Yes.

Q And you have been a member of the board since 1926?

A 1924.

Q Are you and the board of directors responsible for the over-all policies of Second National Bank?

A Yes.

between your bank and Phillipsburg National Bank & Trust Company, is that right?

A Yes.

Q Would you and the board of directors be the individuals who would propose or institute any management changes which [fol. 4] would be made in the bank?

A Yes.

Q These would be policy matters to be considered by the Board?

A Yes.

Q Can you explain for us what discussions, if any, have been had by the board of directors through the years with respect to adding management personnel, hiring management and training people to provide Second National Bank with young officer personnel?

A We have not discussed it enough. We need younger personnel, officers. It is pretty hard to get male officers and something will probably have to be done about having a change in management. At my age I would like to retire.

We have Lester Pursell and Dick Daubert who are coming along. We won't suffer but we need more management help very badly.

Q In the event that this merger were found unlawful and you were not permitted to merge, can you explain what you would do with respect to your management gaps?

A No, I can't positively. We probably would have to do something or the Board would probably have to do something about it very soon.

Q When you say the Board would have to do something about it, by that do you mean that the Board would have to [fol. 5] explore ways of dealing with the problem?

A Yes. They would have to work with the management to decide on who and whether they want to bring someone in from outside or promote someone from inside. That would be the way it would work.

Q As president of the bank, Mr. Pursel, have you had opportunity to observe the manner in which the younger men in the bank have performed their duties and responsibilities?

A Yes.

Q In your opinion, are there younger men in the bank who would be qualified and able to serve in higher executive capacities should you choose to retire?

A Yes.

Q Can you name some of the men who might be considered for your job in the event of your retirement?

A Well, I would say the natural one would be Lester Pursell. I don't think he particularly wants it. At his age he probably would like to retire too pretty soon.

Q Mr. Pursell is how old?

A I think 70.

Q Are there any younger men?

A Mr. Daubert is younger.

Q He is about 39, I believe?

Yes. It's around 40.

Are there any younger men in the bank?

6] A We have no other younger men that are capable at regard.

* * * *

11] Q Has the board of directors given any thought to ing any new branches?

No.

No discussion of this?

No discussion.

Do you anticipate or would you anticipate in the eeable future opening another branch or branches in the t that you remained an independent bank?

Well, that would depend on the capital, of course, her we could afford to do it. That would be Number 1.

12] I think that is a thing that has to be done with any e banks. I think you are going to have to go out as people t.

other words, could I make just a few remarks here?

You surely can.

As you notice, this part of the town was once the real in other words, good people lived here. Now that's all Even your attorneys, your doctors and your schools and hospital have all moved out of town. Most of it is in tcong. That makes a big difference and that's one reason think these two little banks are probably a little different some other places.

u know, this is a country town. In other words, most of usiness comes from outside. People come in. A lot has to th the prosperity of these two banks in the past and in the e and that's personnel.

w this bank has been very fortunate with Mr. Curry and Varga, who has come on later, but Mr. Curry is a good r and some of the prosperity is due to individuals now, gement. That is true with us, I think.

ave lived in this community a long time, know a good people, especially the farmers, and I think a lot of this as meant the growth, not me personally now but the nnel has a lot to do with these two banks.

That may not be true in the city now because you don't [fol. 13] know people but here we know everybody that comes in, pretty near.

Mr. Varga probably knows everybody that comes in the door. He probably will throw up his hand whether he says anything or not, but that has a lot to do with these two banks.

I would like to say that I feel very strongly that it would be too bad for these two banks in the community if we can't merge because the Second National Bank we will say is Number 2 of the two. This one is older and it has always been Number 1. That's natural.

Now Number 2 feels that you have got to get joined with somebody bigger than yourself and that is true with most everything. You can't get anything from anybody that is smaller than you are but you can from someone that's bigger than you are.

In other words, we feel that there are so many things, that there would be a saving and I think the personnel have a lot to do with it.

I would just like to bring that out. Maybe you don't want this in your record.

Q That's fine, Mr. Pursel. I just have a few more questions. You have indicated that a small bank has to join with a big bank.

A I don't say they have to. We can struggle along, [fol. 14] the Second National can, but I am thinking of what difference does it make to people? You are going to have the same personnel that you have now and there won't be too many changes as far as the locations are concerned at any of the branches and that will be an advantage because they will have five instead of two to go to in our case.

Personally I think people would like it.

Q Have you ever given consideration to a merger with any other institution in the county?

A No, we haven't.

Q Is such an arrangement the kind of thing which your bank would find unacceptable?

A We would find it unacceptable, yes.

Q You would much prefer to merge with a bank in the same town?

A We would.

Q And you wouldn't consider merging with an institution 15 miles away, for instance?

A Not at the present time. Now what the future will bring don't know. The laws may change somewhat in New Jersey.

Q You are speaking with regard to the branching laws?

A Right. That might change the picture. But even so, this eems to be the natural thing in my estimation and our Board nd our employees, that we are all for it because we [fol. 15] hink that it would be good for us.

Q How do you think the merger will affect the third bank, he smallest bank in town, if the second largest bank finds the eed or believes it important to merge with the Number 1 ank?

Wouldn't this be even more applicable to the smallest bank?

A I don't think so. I think you will find in Phillipsburg, in his community, that the banks have their friends, people who re used to dealing with them.

A few of them will change. Some will move away and some ill move in, but this wouldn't make any difference to the ther bank.

They say the same thing. They aren't afraid of it.

MR. WEINBAUM: I have no further questions.

CROSS EXAMINATION

Y MR. WATERS:

Q In regard to acquiring new management you mentioned at you felt that the Board hadn't discussed new management ough.

Hasn't the Board generally discussed the need for new anagement?

A No, they haven't.

Q Not at Board meetings?

ol. 16] A No.

Q But haven't you as the president of the bank considered e problem a great deal?

A I have.

Q Have you discussed it with other bankers?

A Not outside of our own bank. I have only discussed it th Lester Pursell.

Q You discussed it with other officers in your bank?

A Yes.

Q Have you and Mr. Pursell considered the cost of bringing in new management?

A Yes, we have.

Q Do you have an idea of the kind of costs that are involved in doing so?

A Well, it would be expensive for a little bank.

Q You have a general idea of the costs?

A Yes. I think we are going to have to pay more to get somebody in than we are paying any of the employees today and that creates a little difficulty, as you know.

Q You were speaking of the fact that there are some younger men in the bank.

Even in view of this don't you feel that you need new additional management?

A Yes, sir.

Q Now as I understand it, you succeeded as president [fol. 17] of the bank about 10 years ago?

A Twelve years.

Q You succeeded a gentleman who was at that time 80 years old?

A Yes.

Q So you yourself would have been about 68?

A Yes.

Q And now you are 80 today, I understand?

A Yes.

Q And you were talking about your most likely successor or possible successor as a Mr. Lester Pursell and I understand he is 70?

A Right.

Q Then the next man that you were directing your attention to is Mr. Daubert and he is only 39, I understand?

A Yes.

* * * *

[fol. 18] Q Now you spoke a great deal about the nature of banking in the area. Would it be reasonable to infer from what you said that loyalty of customers has a great deal to do with banking locally?

A It does.

* * * *

CROSS EXAMINATION

Y MR. ROACHE:

* * * *

Q Is the only other man in your organization capable of king over the management Mr. Daubert aside from Mr. rsell?

A Those are the only two.

Q On direct it was brought out that your loans have creased from 1957 to a period of 1966 from I believe it was 4 million dollars to over 9 million dollars.

ol. 19] Q Is it true that in an area such as this people vel great distances to do their banking, shopping and various her matters that they have to do in the ordinary course of ing?

A Great distances?

ol. 20] Q That they travel distances.

A Oh, up to five miles, I would say.

Q Do people here consider Allentown and Bethlehem as the in shopping area for this particular geographical area?

A No, not since the mall here has been established in patcong Township which is on Route 22. That has taken er.

Q Prior to that it was?

A No. Easton was.

* * * *

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Civil No. 56-68

UNITED STATES OF AMERICA, PLAINTIFF,

v.

THE PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY AND THE SECOND NATIONAL BANK OF PHILLIPSBURG, DEFENDANTS,

and

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR

Opinion Filed: October 14, 1969

APPEARANCES

United States Department of Justice, by Robert C. Weinbaum, Esq., and Eugene T. Austin, Esq., for the United States of America.

Meyner & Wiley, Esqs., by Robert B. Meyner, Esq., and Thomas D. Hogan, Esq., for Phillipsburg National Bank and Trust Company.

Carpenter, Bennett & Morrissey, Esqs., by Sylvester C. Smith, Jr., Esq., and Michael S. Waters, Esq., for Second National Bank of Phillipsburg.

Philip L. Roache, Jr., Esq., for The Comptroller of the Currency.

SHAW, U.S.D.J.

This action is brought by the United States pursuant to Section 15 of the Clayton Act (15 U.S.C. 25) to restrain a proposed merger of the defendant banks which, if consummated, is alleged to be a violation of Section 7 of the Act (15 U.S.C. 18). Phillipsburg National Bank and Trust Company (PNB) and The Second National Bank of Phillipsburg (SNB) have entered into an agreement to merge. The merger has been approved by the Comptroller of the Currency who, by leave of Court, has intervened in this action in support of the proposed merger.

The principal office of each bank is located in the City of Phillipsburg, New Jersey, and each is engaged in interstate commerce. PNB operates two branch offices, one in the borough of Alpha, New Jersey, and the other in Lopatcong, New Jersey. SNB operates one branch office in the City of Phillipsburg.

Section 7 of the Clayton Act is applicable to bank mergers. *U.S.* v. *Philadelphia National Bank,* 374 U.S. 321, 335-349 (1963). The question presented under Section 7 of the Clayton Act is whether the effect of the merger "may be substantially to lessen competition" within the product market where the defendant banks operate. If the answer is in the affirmative, the merger must be restrained unless it is shown "that the anticompetitive effects . . . are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served." 12 U.S.C. 1828(c)(5)(B).

The burden of proof rests upon plaintiff to establish by a preponderance of the evidence the likelihood that competition may be substantially lessened in the relevant product market if the merger is permitted. If the probability of such effect in the relevant product market is established, the burden of proof then rests upon the defendants and the intervenor to establish by a preponderance of evidence that any anticompetitive effects are clearly outweighed in the public interest by the service the resultant bank can offer in serving the conveience and needs of the community. Evaluation of effect upon competition that may result from the merger requires examination of the line of commerce involved and the appropriate geographic product market in which the banks are competitive.

LINE OF COMMERCE

Commercial banking has been identified as a line of commerce in the banking industry. *Philadelphia National Bank, supra.* See also *U.S.* v. *Third National Bank of Nashville,* 390 U.S. 171 (1968); *U.S.* v. *First National Bank and Trust Co. of Lexington,* 376 U.S. 665 (1964). The Supreme Court in *Philadelphia* stated:

> We have no difficulty in determining the "line of commerce" . . . in which to appraise the probable competitive effects of appellees' proposed merger. We agree with the District Court that the cluster of products (various kinds of credit) and services (such as checking accounts and trust administration) denoted by the term "commercial banking" . . . composes a distinct line of commerce. *Id.* at 356.

While the term "commercial banking" may be used as a general description of a line of commerce in bank merger cases, a detailed analysis of all of the competitive banking services offered to the public by the merging banks is necessary in each case. Areas of substantial and effective competition in the market in which the merging banks operate are not necessarily the same in each case. As the Supreme Court noted in *Philadelphia,* supra, "Some commercial banking products or services are so distinctive that they are entirely free of effective competition from products or services of other financial institutions; the checking account is in this category." *Id.* at 356. To the extent that a bank offers substantial banking services in effective competition with other banks and other financial institutions, the effect of a merger upon such competition, regardless of the source, must be considered. It is the line of commerce consisting of products and services offered which must be examined.

This requires a comparison of the products and services offered by competing banks and other financial institutions operating in the market so that the areas of distinct and effective competition may be delineated. Where, for instance, the competition is not substantial or effective, that circumstance is a factor to be weighed in the evaluation of probable lessening of competition. But, on the other hand, where a bank is rendering a substantial banking service in effective competition with competing banks and other financial institutions, the effect of a lessening of present or imminently

potential competition cannot be ignored in giving effect to Section 7 of the Clayton Act. In this case it seems from the record before the Court that in many of the banking services offered by the defendant banks there is very virulent and wide-spread competition from other banks and other financial institutions. The merger would have no substantial anticompetitive effect upon such services. The most significant of these services may be classified as time and savings deposits, conventional real estate loans, and financing of automobiles, appliances and business equipment. The demand deposit or checking account is a distinct commercial banking service free from competition except in the banking industry. In a lesser degree the same is true of short- and long-term commercial and industrial loans. Trust services offered are so insignificant that defendant banks cannot be presently considered as competitive in that field.

Comparatively speaking PNB and SNB rank in terms of assets and deposits among the small banks in the nation. PNB has total assets of $23,861,000 and SNB has assets of $17,255,000. The total assets of the resultant bank after merger would be $41,116,000. The total deposits in the merged banks would be $25,345,000. The lending limit on a single loan of PNB is $120,326. The lending limit of SNB on a single loan is $131,468. The lending limit of the resultant bank after merger could be expected to approach $250,000.[1]

William Paul Smith, a senior economist in the Office of the Comptroller of the Currency, after examining exhibits in evidence stated, "They definitely do show that the banks involved here are in absolute terms small. They show that these banks do relatively little of certain types of business, particularly industrial and commercial lending." There is a preponderance of evidence that supports this conclusion. In terms of function the defendant banks are more comparable to savings institutions than to large commercial banks.

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[1] The Figures on assets, deposits and lending limits have been furnished as of the end of 1967. Lending limits have been computed on the basis of 10% of capital and surplus, undivided profits and reserves as approved by the Comptroller. The banks, however, have fixed lending limits on the basis of 10% of capital and surplus which, as to PNB, would be approximately $90,000 at the end of the year 1967 and $80,000 for SNB. The banks have employed the method of computing lending limits on the basis of 10% of capital and surplus.

Nevins Dennis Baxter, an eminently qualified economist, stated:

> Well, they are fairly small commercial banks which are located in Phillipsburg, and do a business in which they compete with a large number of financial institutions. They are largely concerned with the borrowing or receiving of and lending money, and the activities of these banks really make them much more, in my opinion, like savings institutions than like so many of the larger commercial banks.
>
> I would like to refer to the defendants' Exhibit No. 4 to indicate the ratios of these banks, the factors that these banks concentrate on are quite different from all the banks in the United States. For example, for Phillipsburg National Bank under 10 per cent of the assets was in commercial and industrial loans, and under 8 per cent for the Second National bank, as compared with 19.6 per cent for all banks in the nation.
>
> On the other hand, they emphasize real estate loans, mortgages, much more heavily than do average banks in the nation. 33 per cent for Phillipsburg National Bank, 44 per cent for Second National Bank and only 13 per cent in the nation, and on the deposit side the emphasis is much more heavily on time and saving deposits than it is on demand deposits. Both banks are up at 56 per cent as compared with only 41 per cent for banks in the nation as a whole. That is Table D-4 that I was referring to.

Professor Franklin Edwards, called as an expert by the government and testifying as a qualified economist, emphasized the demand deposit (checking account) and commercial and industrial lending, both short- and long-term, as unique features of commercial banking service. He placed particular emphasis upon loans to business men, particularly "to very small or just small business men, say a business man of under $200,000 or $250,000 of assets." Describing the type of business loans commercial banks made to the small business man, he stated:

> Well, they probably make both short and long-term loans. The short-term loans would be more in the area of working capital, loans for inventory purposes, we'll

say, and the long-term loans might be in modernization of plant, expansion, term loans, these types of things.

Among the features that may be characterized as unique in the services rendered by a commercial bank are the acceptance of demand deposits for checking accounts, and the short- and long-term commercial and industrial loans for working capital, equipment and inventory. Though the defendant banks offer these commercial banking services, an analysis of deposits and loans indicate that they function more substantially like savings institutions. Upon comparison with demand deposits, it appears that the percentage of time and savings deposits is high. The capacity of a commercial bank to generate credit to meet the business needs of the community varies according to its demand deposits. It seems that a high percentage of demand deposits and a high percentage of commercial and industrial loans go hand in hand. The higher the volume of demand deposits, the greater is the potential for expansion of credit in the form of commercial and industrial loans. Accordingly, the quantity of funds that can be pumped back to meet the *current* credit needs of the business community is dependent upon the volume of demand deposits which a bank holds. Time and savings deposits as in the case of savings banks are employed primarily for mortgage and other long-term loans. The same is true with respect to savings and loan associations in the field of mortgage loans.

The activity of the defendant banks in the field of services unique to commercial banking is very limited. This may be illustrated by comparison of deposits and loans with those of Girard Trust Company, a large commercial bank in Philadelphia:

Percentage of Demand Deposits of Total Deposits

	Percent
Girard	58.8
PNB	29.3
SNB (corrected 28%**)	22.8

**G–40 erroneously used IPC demand deposits $3,648,000 rather than total demand deposits $4,550,000. Hence the percentage should be slightly higher, approximately 28%.

Percentage of C&I Loans of Total Loans

	Percent
Girard	72.6
PNB	16.2
SNB	12.3

Percentage of Time and Savings Deposits of Total Deposits

	Percent
Girard	41*
PNB	71
SNB	72

*The total deposits of Girard as listed in D-20 omitted a number and is incorrect. The correct figure should read $1,289,941,000.

Considerable and persuasive evidence has been offered by the defendant banks and the intervenor to establish virulent and wide-spread competition for the savings dollar, conventional mortgage loans, individual and dealer automobile financing, dealer and individual financing of appliances, equipment and commercial inventory. This competition comes in part from the banks located not only in close proximity to Phillipsburg but also from many others located a considerable distance from Phillipsburg. It also comes in substantial part from savings and loan associations, pension funds, mutual funds, government bonds, insurance companies and finance companies. Banks compete with savings and loan associations, pension funds, mutual funds, insurance companies and government bonds for the savings dollar. Hence, the bank savings account and certificate of deposit is not a unique bank service free from effective competition. Savings and loan associations and insurance companies compete with the banks for real estate mortgage loans. Finance companies compete for dealer and individual automobile financing and for financing of appliances and equipment.

The area in and from which the defendant banks encounter highly competitive and effective competition from a host of competitors for the products and services above mentioned is broad, extending radially at least 25 miles from Phillipsburg in some instances and farther in others. Distant entry into the market for substantial commercial and industrial loans ($100,000 and over), floor plan financing of automobile dealers, financing large stocks of commercial inventory and industrial and commercial equipment and appliances seems to be attributable to a lack of capacity of local banks in the Phillipsburg area to extend the substantial credit required. The same is true in a lesser degree with respect to mortgage loans in excess of $80,000, primarily sought for industrial development. It seems, however, that the field of home owner mortgage loans can be adequately serviced by the banks in Phillipsburg and those located within relatively short distances

from Phillipsburg if participation of savings and loan associations with banks in this market is considered. Competition here will not be affected adversely by the merger.

As previously indicated, an efficient trust service has not been developed by the defendant banks or by any others in the immediate area with minor exceptions such as the branch bank of Girard Trust Company of Philadelphia located in Riegelsville, Pennsylvania. While it is true that the defendant banks offer some trust service together with other banks such as The Easton Bank and Trust Company in Easton, Pennsylvania, and Nazareth National Bank and Trust Company, Nazareth, Pennsylvania, and a few others, the capacity and expertise to operate the kind of a trust department which could service substantial trust accounts is so limited that it is inadequate to serve the needs of the community.

If the geographic area of competition were drawn to include competition with all of the banking services which the defendant banks offer, it would be so unduly broad as to be meaningless in any evaluation of impact upon competition by the merger. It seems to the Court that the better approach in defining the line of commerce is to single out those products and services which are not only unique to commercial banking, but also those where the banks in the relevant geographic market are directly and effectively competitive. Parenthetically, it may be noted that while there is wide-spread competition to entice the savings dollar by banks and many other institutions, it is arguable, however, that the convenience factor dictates that a relatively limited area should be considered for this particular service and that it should be included in the relevant line of commerce. The Court concludes that the appropriate line of commerce in this particular case should consist of those products and services labeled as checking accounts, savings accounts, certificates of deposit, personal loans, consumer installment loans, and commercial and industrial loans. Home mortgage loans have not been included because the record before the Court indicates that there are so many sources of funds for this type of loan that the merger could have no appreciable effect upon any potential mortgagor or group.

The approach here has been to select only those products and services as the line of commerce in which the impact of

the merger upon competition, if any, is likely to be felt. It is definitely not likely to be felt in trust department service, small real estate mortgage loans, automobile dealer financing, large scale commercial inventory financing, and in commercial and industrial loans in excess of $100,000. The need for more bank participation to afford effective competition in these products and services will be considered in later discussion of the needs and convenience of the community, particularly with reference to probable pro-competitive effects of the merger.

The approach adopted may not be orthodox in the light of previous bank merger decisions. But this is not the usual bank merger case which has come to the attention of the courts. Each of the defendant banks is a very small bank and the resultant bank will still be a small bank. Their competitors in *many* of the services and products offered are so numerous and effective in competition that the merger creating a larger but still small bank could not have any possible detrimental effect upon the present competition, much less the imminent potential ever increasing competition. Within the general line of commerce there are different clusters of products. Some encounter wide-spread competition from many sources. Others encounter substantial competition only from competing banks. So, while the term "commercial banking" may be used to designate the general line of commerce embracing all bank services, attention must be given in analysis of competition to different groupings within the line of commerce separating those products and services where absence of competition may be significant from those in which competition from many sources is so wide-spread that no question of significant diminution of competition by the merger could be raised.

Accordingly, it seems that attention must be focused upon a small market both in terms of area and in products and services of the merged bank in which it could make its presence in the market felt. This is not intended to suggest that a stronger merged bank, in terms of assets, deposits and a substantial lending limit, could not, by exercise of its increased financial strength, operate with greater economic power than smaller banks and thereby capture the customers for products and services distinct from those above mentioned as constituting the competitive line of commerce in this case. For example, when a business man procures a loan from a local bank which another bank cannot offer, the likelihood is

that he will open his checking account with the lending bank and no doubt avail himself of the other services offered. But this is a healthy kind of competition where the emphasis should rest upon service of the needs of the community rather than upon anticompetitive effect detrimental to a community. Of course, carried to the extreme, where, by exercise of its economic power in the market, the bank could dominate the customer by fulfilling certain needs of which others were not capable with substantial diminution of customer choice, there would be adverse anticompetitive effect. It is not conceivable, however, that the merged bank would have any such economic power or could achieve it in the foreseeable future. Indeed, there is a preponderance of evidence in the record here in support of the argument that increased capacity to serve a rapidly developing community with better bank credit is essential to continued growth and satisfaction of bank service needs within the community rather than outside. This subject will be dealt with in greater detail in discussion of the credit needs of the community.

THE RELEVANT GEOGRAPHIC MARKET

A market consists of a group of sellers handling the same or comparable products and a group of buyers seeking those products. Purchaser convenience of access to the place of business of the seller is of paramount importance in fixing the geographic boundaries of the market. "In banking, as in most service industries, convenience of location is essential to effective competition. Individuals and corporations typically confer the bulk of their patronage on banks in their local community; they find it impractical to conduct their banking business at a distance." *Philadelphia,* supra, *Id.* at 358. It is difficult to draw precise boundaries. If the area is drawn too broadly, customers' convenience is not given due consideration and the expansive market unduly diminishes probable anticompetitive considerations. If geographic lines are drawn too narrowly, undue emphasis is placed upon probable anticompetitive effect. There must be "some fair intermediate delineation which avoids the indefensible extremes of drawing the market either so expansively as to make the effect of the merger upon competition seem insignificant, because only the very largest bank customers are taken into account in defining the market, or so narrowly as

to place appellees in different markets, because only the smallest customers are considered." *Philadelphia*, supra, *Id.* at 361.

The government urges that the appropriate geographic market is the City of Phillipsburg and its environs consisting of the city and a few small municipalities adjacent to the boundaries of the city: Lopatcong Township, Pohatcong Township, Greenwich Township, Alpha Borough. This proposed market is very small. Alternately plaintiff suggests a larger area designated Phillipsburg-Easton and environs consisting of Phillipsburg and environs, the City of Easton, Forks Township, Williams Township, Palmer Township, Wilson Borough, West Easton Borough, Glendon Borough, Stockertown Borough, Tatamy Borough. The most distant point from the City of Phillipsburg in this geographic area is approximately six miles.

The areas beyond the cities of Phillipsburg and Easton are primarily rural with excellent highways for rapid and easy access to the well populated areas. This factor, associated with mobility of the population and economic integration of a much larger area, indicates that the market proposed by the government is too small.

The defendant banks suggest that the appropriate market would include the Allentown-Bethlehem-Easton standard metropolitan area, designated as a standard metropolitan statistical area (SMSA), plus northwestern Hunterdon County in New Jersey and all of Bucks County in Pennsylvania within 15 miles of Phillipsburg. This area would include all of Lehigh County and Northampton County in Pennsylvania, part of Bucks County, Pennsylvania, and Warren and part of Hunterdon Counties in New Jersey. The intervenor adopts the area proposed by the defendant banks but suggests that Lehigh County in Pennsylvania might be excluded except for the City of Allentown. The area suggested by defendant banks and the intervenor as the appropriate geographic market is too large, but, nevertheless, more realistic than the proposals of the government. There is considerable evidence which tends to support the argument of defendant banks that the SMSA is an appropriate geographic market. There is easy access by excellent, non-congested highways from one point in the area to the other and there is a high degree of economic integration. A careful analysis, however, of population, interchange of business transactions and ease of access to banks, considered in conjunction with territorial overlapping of bank business leads

this Court to conclude that the following municipalities in New Jersey and Pennsylvania located within relatively short distances (in point of time and travel) from Phillipsburg do comprise the appropriate geographic market:

NEW JERSEY

Municipality	Distance in Mileage from Phillipsburg	Population*
Warren County:		
Phillipsburg		18,502
Lopatcong Township	Adjacent	2,703
Pohatcong Township	Adjacent	3,543
Greenwich Township	7	1,397
Alpha Borough	3	2,406
Harmony Township	5	2,039
Franklin Township	11	1,729
White Township	12	1,882
Belvidere	11.5	2,636
Oxford	14	1,657
Washington	12	5,723
Washington Township	13	3,055
Mansfield Township	15	2,130

*Population figures taken from 1960 census.

Municipality	Distance in Mileage from Phillipsburg	Population*
Hunterdon County:		
Holland Township	8.5	2,495
Bethlehem Township	11	1,090
Union Township	16	1,717
Alexandria Township	14	1,629
Milford	10.5	1,114
Hampton	13	1,135
Glen Gardner	14	787
High Bridge	17	2,148
Clinton	15.5	1,158
Bloombury	7	838

Municipality	Distance in Mileage from Phillipsburg	Population*
Northampton County:		
Easton	1	31,955
Palmer Township	5	8,823
Glendon Borough	3.5	555
Upper Nazareth	7	2,661
Bethlehem Township	9	6,439
Lower Saucon	11	5,536
Freemansburg	9	1,652
Forks Township	2	3,249
Wilson Borough	3	8,465
Stockerton Borough	6	777
Nazareth	6.5	6,209
Bethlehem	11	55,325
Williams Township	3	2,823
W. Easton Borough	1	1,228
Tatamy Borough	6	762
Lower Nazareth	6	1,729
Hellertown	11.5	6,716
Total		197,421

Municipality	Distance in Mileage from Phillipsburg		Population*
Bucks County:			
Riegelsville	7	(approx.)	953
Nockamixon	10	"	1,785
Springfield	10	"	3,085
Bridgeton	10	"	948
Durham	10	"	735

*Population figures taken from 1960 census.

The areas beyond the boundary lines of the cities of Phillipsburg, Easton and Bethlehem are sparsely populated but progressing rapidly in development from farm lands to home development and industrial and commercial enterprise. All significant development is taking place beyond the city limits of the well populated cities. For example, the population in Phillipsburg has remained more or less static for a long period of time. Industry and commercial enterprise has been moving out of the well populated areas of the city. The same is true in some

degree with the city of Easton. Branch banks have been established beyond city limits to service the needs of a rural community that is growing rapidly in transition from an agricultural economy to commercial and industrial. Distances over good highways between the points above mentioned are short and commuting time by automobile ranges from seven to a maximum of twenty minutes. In fact, considering the ease of access from one point to another over uncongested highways, it would not be an exaggeration to state that it might take less travel time during business hours to journey by automobile from Bethlehem to Phillipsburg than it would to go from the outskirts of Philadelphia to the center of town.

Regular movement of population to and from places of business and employment and to stores for consumer goods throughout the entire area above mentioned has, among other things, led the Court to find that economic integration exists in the above described geographic market to such an extent that the lines should not be more narrowly drawn. There is not only little inducement to people residing beyond the city limits of the city of Phillipsburg and the city of Easton to make frequent use of the stores and commercial establishments in those cities, but cogent evidence that the trend is diminishing and even the residents of the cities are finding desirable employment and commercial facilities better suited to their needs in the rapidly developing suburban areas which are not afflicted with congestion in travel or parking of automobiles. Indeed, as to the city of Phillipsburg there has been no dispute that it has been rapidly deteriorating causing business enterprise to be established in the suburbs. The same is true in lesser degree in the City of Easton. Accordingly, to accept either of the government's proposed geographic markets—Phillipsburg and environs or Phillipsburg-Easton and environs—would be to ignore the population, commercial and industrial drift into the suburban areas within a radius of approximately seven to fifteen miles of the cities of Phillipsburg and Easton. There is a preponderance of evidence that the growth of population and of the commercial and industrial enterprise outside city limits are continuing and will be intensified.

If, for instance, there is a prevalent pattern of employment within a described area with regular and constant movement of the population and routine shopping by the population from one point to another to satisfy consumer needs, there is

evidence that the area within which the movement takes place is economically integrated as a market. The shopping habits of a buyer, whether in a bank or other market, have vital significance as a factor in the determination of a relevant market. Ease of access to the places of business patronized may be inferred from the buyer's prevalent use of such places of business. Places of employment is also a factor.

The government in its argument for a narrowly drawn banking market has emphasized percentages of banking business which PNB and SNB draw from the city of Phillipsburg and the populated areas immediately adjacent thereto. These percentages have significance only to the extent that they are considered in conjunction with concentration of population. For example, it would be expected that a higher percentage of deposits and loans would be derived from a heavily populated area of the market than from one that was sparsely populated. But that circumstance would not be a valid reason for moving the small town out of the relevant market. If the ratio of business on a per-capita basis were the same or comparable, the small town belongs in the market. Any other approach would exclude most of the suburban areas. Moreover, even if little or no business is presently derived from a particular locality, if there is convenient ease of access to the market, the potential use as a satisfactory, convenient alternate choice should be considered.

ANTICOMPETITIVE EFFECT OF THE MERGER

A merger will be enjoined if its effect in the relevant market "may be" substantially to lessen competition. 15 U.S.C. 18. The Bank Merger Act of 1966 (12 U.S.C. 1828) did not change the traditional tests for measuring anticompetitive effect. ".... Only one conclusion can be drawn from the exhaustive legislative deliberations that preceded passage of the Act [Bank Merger Act 1966]: Congress intended bank mergers first to be subject to the usual antitrust analysis; if a merger failed that scrutiny, it was to be permissible only if the merging banks could establish that the merger's benefits to the community would outweigh its anticompetitive disadvantages.... *U.S.* v. *Third National Bank of Nashville*, 390 U.S. 171, 182 (1968). Percentage of market control and concentration in the industry have been recognized tests for evaluating the anticompetitive

effect of a merger. *Philadelphia*, supra; *Brown Shoe Company* v. *U.S.*, 370 U.S. 294 (1962). The court in *Philadelphia*, supra, stated:

> Specifically, we think that a merger which produces a firm controlling an undue percentage share of the relevant market, and results in a significant increase in the concentration of firms in that market, is so inherently likely to lessen competition substantially that it must be enjoined in the absence of evidence clearly showing that the merger is not likely to have such anticompetitive effects. . . .
>
> Such a test lightens the burden of proving illegality *only with respect to mergers whose size makes them inherently suspect* in light of Congress' design in § 7 to prevent undue concentration. Furthermore, the test is fully consonant with economic theory. That "[c]ompetition is likely to be greatest when there are many sellers, none of which has any significant market share," is common ground among most economists, and was undoubtedly a premise of congressional reasoning about the antimerger statute. *ID.* at 363. (Emphasis supplied).

There is no precise percentage of market control or increase in concentration which can be used as a guide. The decision in each case must turn upon the particular facts in that case. For variations in percentages considered by the Supreme Court see *Philadelphia*, supra; *Brown Shoe Co.*, supra; *U.S.* v. *Continental Can Co.*, 378 U.S. 441, 461 (1964); *U.S.* v. *Von's Grocery Co.*, 384 U.S. 270 (1966). The percentage of market control and increase in concentration must be evaluated in the light of the structure of the entire market, including the existence of a history toward concentration. Where there is a prior history toward concentration, a relatively low percentage of market control or relatively small percentage of increase in concentration may be sufficient to invalidate a merger. Similarly, when the present level of concentration is great, a slight increase may justify disapproval of the merger. The court in *U.S.* v. *Provident National Bank*, 280 F. Supp. 1 (E.D.Pa. 1968) said:

> We do not find that this merger which would produce a bank controlling approximately 10% of the relevant market is presumptively anticompetitive. This

percentage figure is not undue in relation to the composition of the market as a whole. The resultant bank certainly will not have market power which would enable it to persistently behave over substantial periods of time in a non-competitive fashion. . . . The converse is true. The defendant banks desire this market power so that they can behave competitively.

Yet, Congress and the Supreme Court, in carrying out the mandate of Section 7, have stated that one purpose of Section 7 is to arrest a trend toward concentration or a tendency toward monopoly, before the consumer's alternatives disappeared through mergers. . . . This Court accepts the fact that both Provident and Central-Penn would become a better and more competitive bank after the merger, but this fact does not offset the loss of Central-Penn which is a growing and healthy bank in an oligopolistic market.

The case which we feel controls the merger before us is U.S. v. Von's Grocery . . . [There] the resultant company would control only 7.5% of the total value of retail groceries sold in the . . . market each year. The . . . market was characterized as one where there was a long and continuous trend toward fewer owner-competitors. . . . On these facts alone, the merger was condemned without a functional inquiry into the nature and quality of the competition. The basic purpose of the Sherman and Clayton Acts . . . was to prevent economic concentration in the American economy by keeping a large number of small competitors in business. . . . This view . . . shifts the emphasis of Section 7 from protecting competition to protecting competitors. . . . The Philadelphia banking market unqualifiedly can be characterized as one where there has been a long and continuous trend toward concentration.

Therefore, even if we did find that competition would be improved by this merger: "[it] falls within this trend toward merger and toward more concentration, . . . [and] must be ruled anticompetitive under existing antitrust laws. *Id.* at 19-20.

"[W]hile providing no definite quantitative or qualitative tests by which enforcement agencies could gauge the effects of a given merger to determine whether it may 'substantially' lessen

competition or tend toward monopoly, Congress indicated plainly that a merger had to be functionally viewed, in the context of its particular industry. That is, whether the consolidation was to take place in an industry that was fragmented rather than concentrated, that had seen a recent trend toward domination by a few leaders or had remained fairly consistent in its distribution of market shares among the participating companies, . . ." *Brown Shoe Co.*, supra, at 321–322.

Competing banks percentage of total assets in the market, deposits and percentage of total market deposits are listed as follows:

Bank	Assets	Percentage of total
1. First National Bank & Trust Co. (Bethlehem, Pa.)	$115,327,000	18.96
2. Union Bank and Trust Co. of Eastern Pa. (Bethlehem)	93,747,000	15.41
3. Easton National Bank & Trust Co. (Easton, Pa.)	75,591,000	12.43
4. Hunterdon County National Bank (Milford, Holland Twp., High Bridge and Clinton Branches)	57,716,000	9.49
5. Nazareth National Bank & Trust Co. (Nazareth, Pa.)	32,014,000	5.26
6. Lafayette Trust Bank (Easton, Pa.)	27,705,000	4.56
7. Phillipsburg National Bank (PNB) (Phillipsburg)	23,861,000	3.92
8. Northampton National Bank (Easton, Pa.)	23,225,000	3.82
9. First Clinton National Bank (Clinton)	21,199,000	3.49
10. First National Bank of Washington (Washington)	20,494,000	3.37
11. First National Bank of Milford (Milford)	20,443,000	3.36
12. First National Bank, Belvidere (Belvidere)	17,303,000	2.85
13. Second National Bank of Phillipsburg (SNB) (Phillipsburg)	17,255,000	2.84
14. Washington Trust Company (Washington)	15,857,000	2.61
15. Second National Bank of Nazareth (Nazareth, Pa)	15,187,000	2.50
16. Phillipsburg Trust Co. (Phillipsburg)	13,161,000	2.16
17. Saucon Valley Trust Co. (Hellertown, Pa.)	12,947,000	2.13
18. Citizens National Bank of Bloomsbury (Bloomsbury)	5,225,000	.86
Total	608,177,000	[1]100.02

See footnote at end of table

Bank	Deposits	Percentage of total
1. First National Bank & Trust Co. (Bethlehem, Pa.)	$102,898,000	18.98
2. Union Bank and Trust Co. of Eastern Pa. (Bethlehem)	79,072,000	14.58
3. Easton National Bank & Trust Co. (Easton, Pa.)	67,722,000	12.49
4. Hunterdon County National Bank (Milford, Holland Twp., High Bridge and Clinton Branches)	53,458,000	9.86
5. Nazareth National Bank and Trust Co. (Nazareth, Pa.)	28,706,000	5.29
6. Lafayette Trust Bank (Easton, Pa.)	24,309,000	4.48
7. Phillipsburg National Bank (PNB) (Phillipsburg)	22,358,000	4.12
8. First Clinton National Bank (Clinton)	19,396,000	3.58
9. Northampton National Bank (Easton, Pa.)	18,961,000	3.50
10. First National Bank of Milford (Milford)	18,785,000	3.46
11. First National Bank of Washington (Washington)	18,236,000	3.36
12. First National Bank, Belvidere (Belvidere)	16,029,000	2.96
13. Second National Bank of Phillipsburg (SNB) (Phillipsburg)	16,005,000	2.95
14. Washington Trust Company (Washington)	14,506,000	2.68
15. Second National Bank of Nazareth (Nazareth, Pa.)	13,314,000	2.46
16. Phillipsburg Trust Company (Phillipsburg)	12,078,000	2.23
17. Saucon Valley Trust Co. (Hellertown, Pa.)	11,560,000	2.13
18. Citizens National Bank of Bloomsbury (Bloomsbury)	4,788,000	.88
Total	542,181,000	[1]99.99

[1]Due to rounding.

It would have been appropriate to include the branch bank of the Girard Trust Company which is located in Riegelsville, Pennsylvania. It was omitted in computation of total assets and deposits of the banks in the area because a breakdown of the banking business of the branch was not available. The parent bank, Girard Trust Company of Philadelphia, has total assets of $1,457,713,000 and total deposits of $1,289,941,000.[2] Obviously these figures could not be used for any meaningful analysis of the structure of the banking market involved here. Such evidence as there is, however, indicates that if the branch bank's assets and deposits were available and included, it would not cause a very substantial comparative change in the above cited percentages either in terms of concentration or deposits. It might also be mentioned at this point in dealing with the subject of satisfactory alternate consumer banking choices that other large banks at the fringe of the market, are easily accessible and constitute effective potential competition.

There is no historical trend toward concentration in the banking industry in this market and there is no present concentration. The market is fragmented. The bank patron has many convenient choices. Including the branch bank of Girard Trust Company, there are nineteen banks in the market together with a number of branches to offer convenient services to bank customers. The total population by the 1960 census is 197,421. Percentage control of the market, as indicated by deposits, is well distributed among the existing banks. Considered in terms of percentage increase of assets in the market and increase in percentage of total deposits, the merger will have no substantial effect.

In terms of assets PNB is the seventh largest bank and SNB is the thirteenth. After the merger, the new bank PNB–SNB will be the fifth largest bank with 6.76% of total assets in the market. The two largest banks, First National Bank and Trust Company, Bethlehem, and Union Bank and Trust of Eastern Pennsylvania, Bethlehem, hold 34.37% of all of the assets in the market. The four largest banks, First National Bank and Trust Company, Bethlehem; Union Bank and Trust of Eastern Pennsylvania, Bethlehem; Easton National Bank & Trust Company and Hunterdon County National Bank hold 56.29% of the total assets. The five largest, including the four just mentioned plus Nazareth National Bank and Trust Company,

[2]Figures shown on Exhibit D–20 as corrected from Exhibit D–17.

hold 61.55%. After the merger, the concentration of the four largest banks will remain unchanged. It is only when the five largest banks are considered that there is a change in concentration. This change is from the pre-merger five largest banks concentration of 61.55% to a post-merger five largest banks concentration of 63.05%. The percentage of increase in concentration is 2.4%. The percentage of total assets of the merged bank in the market will be 6.76%.

PNB ranks seventh in percentage of deposits and SNB ranks thirteenth. After the merger the new bank PNB–SNB will rank fifth with 7.07% of total deposits in the market. The two largest banks have 33.56% of the deposits; the four largest have 55.91%; the five largest have 61.20%. After the merger, the five largest banks concentration will be 62.98%. The percentage of increase in concentration after the merger is 2.9%. The percentage of total deposits of the merged bank in the market will be 7.07%.

The percentage figures cited above indicate clearly that the merger will not cause any substantial increase in concentration of economic power or substantial percentage increase of the share of the merged bank in total deposits in the market.

Ease of access to the market is also a factor that deserves consideration in evaluating the anticompetitive effects of a merger. It is not difficult for a small group of business men to raise sufficient capital to establish a new small bank when the banking needs of the community are sufficient to warrant approval of the charter. N.J.S.A. 17:9A–4,5.[3] Warren County,

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[3]N.J.S.A. 17:9A–4 Capital stock and surplus:

A. The capital stock of every bank hereafter organized shall amount to not less than:

(1) $100,000.00, if the population of the municipality wherein the principal office of the bank is to be located does not exceed 10,000;

(2) $150,000.00, if the population of such municipality exceeds 10,000, but does not exceed 50,000;

(3) $200,000.00, if the population of such municipality exceeds 50,000, but does not exceed 100,000;

(4) $300,000.00, if the population of such municipality exceeds 100,000, but does not exceed 200,000;

(5) $500,000.00, if the population of such municipality exceeds 200,000; provided that, if the certificate of incorporation states that the bank shall be authorized to exercise all or any of the powers specified in section 28, its capital stock shall be not less than $500,000.00.

New Jersey, is now included by statute in a banking district consisting of the counties of Bergen, Essex, Hudson, Morris, Passaic, Sussex and Warren. Large city banks in Newark and in other well populated cities in the counties mentioned can now establish branch banks in Warren County in any municipality in which no banking institution has its principal office or a branch office and in any municipality which has a population of 7,500 or more where no banking institution has its principal office despite the fact that there are one or more branch offices of other banking institutions in that municipality. Pamphlet Laws 1968, Chapter 415, N.J.S.A. 17:9A–19, approved January 17,1969 and effective July 17,1969.[4]

Pursuant to these statutory provisions there are many locations in Warren and Hunterdon Counties where either a new bank or a branch bank could be established.

B. If the commissioner shall find that the principal office of a bank will be located in a municipality which serves as a business or as a banking center for outlying districts not otherwise adequately provided with banking facilities, so that such bank will transact business with a substantial number of persons who do not reside in the said municipality; of if the commissioner shall find that, because of its location, a bank will transact a substantial part of its business with persons from a neighboring municipality or municipalities, the commissioner may, in his discretion, require that the capital stock with which such bank shall commence business, shall equal the minimum capital stock which would be required of the bank if its principal office were to be located in a municipality having a population equal to that of the combined populations of the municipality in which it is to be located and of the area, outside such municipality, which it will serve.

C. Every bank hereafter organized shall commence business with a surplus at least equal to 20% of its capital stock.

N.J.S.A. 17:9A–5 *Reserve or organization expense:*

Every bank shall, on its organization, establish a fund at least equal to 5% of its capital stock as a reserve fund for organization expense. Organization expense shall mean all lawful expense incurred preliminary to commencement of business. Any unexpended balance in the fund shall be credited to undivided profits.

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[4]No bank or savings bank shall establish or maintain a branch office which is located outside the municipality in which it maintains its principal office; except that a bank or savings bank may establish and maintain a branch office or offices anywhere in the same banking district as that in which it maintains its principal office:

* * * * *

In the light of the absence of any historical trend toward concentration or the existence of any present undue concentration, there can be no *presumptive* inference of anticompetitive effect. Such effect in this case must be established by a preponderance of the evidence. Evidence from which anticompetitive effect could be inferred is meager and not persuasive. It was suggested that mergers tend to cause an increase in interest charged on loans and a decrease in interest paid on deposits. The evidence does not support this theory. Nor did the government point with evidence to any other particular banking service which might be adversely affected by the merger. Indeed, there is a preponderance of evidence to support a conclusion that the merger would have procompetitive effect *if* the merged bank, employing its increased resources, adopted aggressive policies which would have a tendency to stimulate other small banks to become more aggressive in serving the needs of the community. Robert Leupo, Executive Vice President of Phillipsburg Trust Company, described PNB and SNB as banks in direct competition with his bank describing it as healthy competition beneficial to his bank. He stated:

> I would say it was healthy competition, healthy competition to the extent that we have grown, that we have been recognized and we have progressed. I would say it was healthy competition.

It seems from the evidence that most of the small banks in the area have not been interested in building up banking services except to the extent that aggressive competitors led the way. An ultraconservative policy of banking seems to have been prevailing with reluctant change occurring only when profits and future growth were threatened by virulent competitors. There is an attitude of complacency on the part of many banks. They are content to continue outmoded banking practice and reluctant to risk changes which would improve service and extend services over a greater area to a larger segment of the population.

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(3) when each proposed branch will be established in a municipality in which no banking institution has its principal office or a branch office; except that, when a municipality has a population of 7,500 or more, and no banking institution has its principal office therein, a bank or savings bank may establish and maintain a branch office or offices in such municipality notwithstanding the presence therein of one or more branch offices of one or more banking institutions.

This Court finds that plaintiff has failed to sustain its burden of proof to establish by a preponderance of the evidence that the merger would have any measurable anticompetitive effect. The Court finds, however, that since the subject of serving the convenience and needs of the community has been well developed by the evidence, that it is appropriate to discuss this defense.

CONVENIENCE AND NEEDS OF THE COMMUNITY TO BE SERVED

There are two banking services which must be improved in the area to satisfy present and rapidly increasing need. Lending limits of the small banks are not sufficient to satisfy loan requirements for substantial industrial and commercial enterprise. There are only a few of the larger banks in the area that can handle single loans of $75,000 and upward. As a result, a substantial volume of credit sought by industrial and commercial enterprise must be arranged either directly with the large city banks outside the area or by way of a participating loan through a local bank. There is a definite lack of competent trust service and here again servicing of substantial trust accounts must be obtained outside the community with the larger banks that maintain trust departments with expertise in the field of investments. Very small banks like PNB and SNB do not have the financial capacity to maintain separate commercial and industrial lending departments and trust departments headed by a full-time officer with specialized expertise. If the merger is approved, the merged bank can establish these departments and staff them with personnel capable of the kind of loan and trust service that patrons must, in large part, now seek outside the community.

There is no doubt that a well trained, full-time specialist in a loan department could serve a rapidly increasing need of commercial and industrial enterprise in the community by readily available expert and diversified credit planning and counsel. The same is true with respect to a trust department.

A larger bank than either PNB or SNB is necessary to furnish better loan and trust service to the community. There are very few banks in the area that are even partially equipped to furnish large commercial and industrial enterprise with the kind of trust and loan banking service that is needed. Another larger bank offering these services would diminish the existing inadequacy.

The salaries which a full-time specialist in a loan department and a trust department could command are beyond the financial reach of either PNB or SNB. In fact, it seems that highly specialized experts in loan planning service and trust service to bank patrons are constantly sought by banks and difficult to obtain. The expense of highly specialized service in lending money and servicing trust funds can be incurred only by banks larger than either PNB or SNB. The initial salaries of the necessary specialists is not the only consideration. The substantial salaries which either bank would have to pay would cause an upgrading of all salaries from the president down as a matter of morale. In addition, there would be the matter of fringe benefits. Small banks do not pay high salaries and fringe benefits are limited.

The government stresses the argument that neither PNB nor SNB have made any genuine effort to recruit specialists to head a commercial and industrial loan department or a trust department, but the evidence does establish that such specialists are not easy to find and not likely to be induced to accept employment for a small salary or with a very small bank. It is, however, clear from the evidence that neither bank can afford the expense of employing well trained specialists to head a loan and trust department. There was tentative exploration of the possibility of obtaining qualified bank officers which ceased when it became clear that the expense was out of reach.

The forecast is that if the merger is approved, the merged bank will set up a commercial and industrial loan department headed by a bank officer who is a specialist in the field and would do the same as to a trust department. The merged bank would have capacity to do so and there is no reason to believe that it would not do so as a matter of self-interest in future growth and better service to the community.

Illustration by excerpts from testimony of some of the witnesses[5] clearly establishes the fact that a larger bank could improve the present inadequate bank lending and trust service. It should be emphasized that present need will become more critical with future growth of the community. A business man who operates a television sales and service business in Phillipsburg with total assets of approximately $200,000, stated:

[5]Names of witnesses are omitted because of request that financial problems of a confidential nature not be made public.

Q. Have you had to borrow money from the Phillipsburg National?

A. Yes. Originally when I purchased the store, this business on Memorial Parkway, four years ago this November, I approached them and they extended to me a line of credit of $50,000 for floor planning. Within I would say approximately two years ago I bought this business and building on a sales purchase agreement, and I wanted to pay the party off whom I purchase it from, and I approached the bank for a mortgage, which was approved, but at this time I had to take a cut in my floor planning account of $25,000 to allow for the mortgage I was seeking.

Q. That is with the mortgage and your borrowing you would have exceeded the limits?

A. Yes, sir.

Q. Where did you turn in order to get credit?

A. Well, I had to increase my line of credit with First Pennsylvania Bank in Philadelphia and also with General Electric Credit Corporation.

Q. Would you prefer doing business with the Phillipsburg National?

A. Yes I would, primarily because I am well known at the bank, and as far as the business aspects, the rate of interest was less, and now in comparison to General Electric Credit Corporation their rates are 1.4 per cent per month on unpaid balances, whereas until the last increase to 7 per cent per year it was a half per cent per month at the local bank.

Q. So you are really paying 15 per cent?

A. That is right, on a yearly basis. At the First Pennsylvania Bank the rate is approximately 9 per cent per year at this time.

Q. And what are your credit needs at this moment?

A. Well, that fluctuates. While going into the greatest part of our business–in other words, the last quarter of the year is usually the bulk of our business, and at this time of the year we do need more moneys to display more merchandise and too, the biggest part of our business is done through this period of time.

Q. Well what limit would you desire or what uppermost limits?

A. Well, in other words, with mortgages and other moneys that I would need as far as floor planning–in other words, a gross amount of approximately $200,000.

Q. Are there any other disadvantages of doing business with the General Electric Credit outfit?

A. Well, with any distributor it is much easier if you have moneys available when you go to purchase a product, say during their–during the year most of these companies have at least four shows, and at this time if the money is available to me–in other words, if I would go and be able to buy more or less on a cash basis I can buy the merchandise that I want, whereas what they do to entice a person into buying their packages, they do mix products in there which are slow movers, and in order to buy what we want we must take these other items also.

Q. If you have the money from the bank and went in there–

A. You can purchase just what you want.

Q. Then you wouldn't have the slow items.

A. This is right, sir.

A manufacturer in Greenwich Township stated:

Q. What do you contemplate your borrowing needs will be in the next few years?

A. We are getting into more sophisticated types of machines, which are high prices; our latest acquisition, a year and a half ago, was a $65,000 installation. The next ones, in all probability, will be in the range of $100.00 per machine.

Q. What do you contemplate your credit needs then to be?

A. The situation obviously has to be determined when it arises, but I would say that our needs will be between $100,000 and $200,000.

Q. Where are you banking presently?

A. At the Second National Bank in Phillipsburg.

Q. Would a merger of these two banks be of assistance to you?

A. I believe a larger bank in Phillipsburg will be a definite asset to me.

Q. For how long a period do you usually want to borrow money?

A. Our history has been on machinery purchases we have borrowed on the basis of three to five years.

Q. Isn't it possible to get this through the company that sells you the product?

A. Yes.

Q. Why do you prefer the bank?

A. It is much more convenient to do business locally and it is cheaper.

Joseph G. Varga, Vice President of Phillipsburg National Bank, describing the credit situation at the bank, stated:

A. We have requests for commercial and industrial loans for people that are starting into business. They would run in the neighborhood of 25,000, 75,000 and upwards. Our biggest concern at this time is the fact that some of our customers who have gone into business loans with us are continually growing. They are asking us for larger lines of credit. They also ask us for commercial mortgages, and at the lending limit that we are now these corporations and business houses are outgrowing our bank.

Q. It is not always a loan, is it, that they want as much as a line of credit..

* * * * *

A. The lines of credit are established for various business houses and in order for them to get better trade credit corporations or people that are doing trading in our area will call the bank and ask what kind of demand deposit balance the corporation has, and then they would ask what kind of line of credit, "Are you giving them a line of credit?" Is their credibility worth so much, and we would say, "Well, we are lending them a certain figure on an open line."

Q. How about the practice with respect to contractors bidding on jobs?

A. One of the requirements of a contractor bidding on a school program or something like that is to have an established line of credit at a bank, and this enables him to submit his bid.

A Ford dealer stated:

Q. And when you first came to Phillipsburg did you endeavor to do business with a bank there?

A. Yes, the Phillipsburg National Bank & Trust Company.

Q. Will you describe your problem?

A. Well, the bank was recommended to me and I opened a business account there, and they had an automobile department at that time, and I tried to get a line of credit for my floor plan. At that time it was about $150,000, and they couldn't handle it. Their loan limit there wouldn't permit this, and I subsequently had to go to Ford Motor Credit Company, which was at that time in Newark.

Q. Are you doing business with them?

A. With Ford Motor Credit Company.

Q. What would your preference have been?

A. At that time I wanted to go to a local bank due to the nature of our business.

A business man in Phillipsburg, speaking of the need for a loan officer and a trust department stated:

Q. What would you say about a merger of these two banks so far as your doing business with them is concerned?

A. I would welcome it because of the loan limits. For example, at the first of the year when I was more heavily committed in the market than I am now, I owed about five hundred-odd thousand dollars to the various banks, and I hit a loan limit at that time of about $100,000. I don't know if it was just around that time, but I know at one time Mr. Murray told me they wouldn't go over a hundred thousand. I hit that limit. I hit an $88,000 loan limit at the Second National and a hundred thousand loan limit at the Phillipsburg Trust, so I had to go into Easton. Actually I think it would be much more convenient. For one thing, I think that a larger bank could afford to have somebody in their loan department that would do that only, that would be more familiar with securities. This is not derogatory to any bank.

Q. Especially since you are a borrower.

A. Yes. Sometimes I have to explain to them what may or may not be done, you know, and someone who is more familiar with it—I also feel that if they could afford to hire or be large enough to have someone with

some knowledge of this, I think they would do a lot better in their business. There are a lot of collateral loans that are going begging.

Q. Where do they get it?

A. Sometimes they don't even know they can get it. Well, usually they go elsewhere. I imagine that the banks in Allentown do a lot of that. They are much larger.

Q. Is there a need in the area you have described for trust services?

A. Oh yes. I think this is a very big thing. I know this has happened to me, so I'm sure it has happened to the rest of the community. The country has become more affluent and the average workman today is coming into my place and spending—the average workman today is much more affluent. I am doing a security business today with people that never dreamed of owning a share of stock, and one fellow asked me to set up a sort of estate based on mutual funds, and he was talking about five or six thousand dollars. This is about three or four weeks ago, and I told him if anything happened it would be worth a lot more money. Most people don't realize they have an estate. There is insurance and if the house is sold this is a lump sum and there are many other things that are worth money that don't show up until there is an estate, and frankly a lot of women—we live in an area where there [are] a lot of foreign-born people, and some of them are not terribly educated, and a lot of these people should have some sort of reliable trust setup so the estate wouldn't be dissipated or improperly handled.

Q. How about pension funds?

A. Oh, well every union is looking for a pension fund, and the way some of them are being handled I think it would be a lot better if a trust officer looked after them.

A department store owner stated:

Q. Do you have any business which could be classified as trust business?

A. We have set up a long time ago profit-sharing trusts in our Easton store which was followed by profit-sharing trusts in the Bethlehem store. Our realty corporation over there and in the new Phillipsburg store—is that what you refer to?

Q. Yes. If the Phillipsburg bank had a full time trust officer would there be a possibility that you would turn some business in that direction?

A. We would very much like to, and as a matter of fact part of this hinges in our feeling the competitive odds against a small independent retailer. He has to exercise every bit of ingenuity he has to overcome the competitive effect of nationally known outlets and big advertising campaigns, and we do everything we can to have the public in the area aware that we are part of the community. One of them is to bank there, to borrow there, to have the bank use every service, give us every service they can, and the minute the Phillipsburg National has a trust department the trust account for the Phillipsburg store will be moved over there. We have that in our trust indenture. It can be changed.

Q. You know they have a trust department there now?

A. Well, we would like to have a complete service.

Q. How about borrowing? I would assume being in the merchandising business that you borrow over the years?

A. When we opend the Phillipsburg store, prior to opening the Phillipsburg store our first move was to check with the Phillipsburg National, because we felt an examination of the statements indicated that they were the one, the only one that could come anywhere near giving us what we needed, and at that time I believe their top line capacity was about $90,000. We took it all. We reduced that. I believe we still have some, but our present expansion is going to require our reentering into the matter of borrowing from some source, and we prefer it to be a local bank. This is very shortly, within the next month or two.

Q. What do you think the extent of that borrowing will be?

A. It wouldn't be less than a couple of hundred thousand dollars, and it might go considerably higher.

Q. Where would you take that?

A. Where would we borrow it?

Q. Yes.

A. Well, we would borrow every nickel we could from the Phillipsburg bank, and after that it would be a

matter of finding out how much we needed and shopping around.

The foregoing are only a few excerpts from a volume of evidence which clearly establishes the inadequacy of loan service and trust service available in the community and the need for improvement in that aspect of local banking. As commercial and industrial enterprise continue to grow and increase numerically in the area, a substantial part of banking business will have to be done outside the community. This is not only inconvenient, but economically unhealthy for future development. One who procures a loan from a bank is likely to do his other business with that bank, including the checking account. The demand deposit generates capacity for increased expansion of credit that may be applied to stimulate industrial and commercial growth with all of its attendant benefits, including greater opportunities for employment.

In the trust field it is desirable that pension funds of unions and large industries and profit sharing plans as well as trust funds from other sources be administered locally.

It was emphasized by the government that local loan needs could be satisfied by participating loans. William F. Greenley, Jr., Senior Vice President of Fidelity Union Trust Company, a corresponding bank, commenting upon the disadvantages of such loans, stated:

Q. Is there any disadvantage in participations?

A. Yes. I think there is. There is a disadvantage to this extent, first of all there is a general money market. When funds were tight, such as they were part of this summer and certainly a year before this, I think most banks or any smaller bank had a real problem getting a participation. Now, not only is it the general market money that decides this, but it can be the special pattern of loans and deposits that the correspondent bank or banks may have. At certain times of the year certainly you can get—other things being equal—you can get a participation from us. At other times we would not care to participate because we have our funds either fully tied up or perhaps more gainfully employed.

There is the other portion to it, too, that many times where a participation is sought it is the type of business that you want to be right on hand watching. I am thinking now of say a restaurant or an unseasoned business where you just feel you want to be in there all

> the time. There is also the thing, too, with a participation loan, that generally the bank giving the overage requires to be paid out first, so that if things go fine this is fine, but also if it is a wavery situation the local bank is pretty well stuck in there.

Another source of borrowed money is the finance company to which business men must resort when lending limits of the local banks are inadequate. It has been said that finance companies cannot compete with banks because they are not primarily accumulators of money and must borrow for their needs from banks and, as a consequence, must demand a higher rate of interest from borrowers. This picture seems to be changing. Professor Homer Kripke with extensive experience in the development of finance company business traced the history with analysis of present operations. According to his testimony, with which the Court was impressed, finance companies presently borrow very little money from banks and today they can outbid the banks for loans. They can and do obtain million dollar loans from all large industrial corporations in the United States such as the oil companies, tobacco companies and the large chemical companies. The evidence indicates that finance companies occupy an advantageous position in the lending market where there is borrower necessity to use their lending capacity. This seems to be particularly true in the matter of floor planning and other large inventory financing. The impact here is not only upon the business dealer, but also upon the individual consumer whose paper goes back from the dealer to the finance company at a higher rate of interest than would be the case if it came into the hands of a bank through dealer financing by a bank. Larger bank lending limits will meet an urgent need of business men and be ultimately beneficial to the individual consumer in financing purchase of goods.

There was much discussion about the effect of the Bank Merger Act of 1966 upon application of Section 7 of the Clayton Act to mergers. The traditional test for determining anticompetitive effect was not changed. *Third National Bank of Nashville,* supra. But while fragmentation of the market as opposed to concentration is still favored, it is clear that Congress did not intend to emphasize fragmentation to that point *in the banking industry* where there would be substantial detriment to the consumer. For historical comparative

background see *Brown Shoe Co.*, supra, 294, 344.[6] Strong banks capable of stimulating industrial and commercial growth and serving individual needs economically are vital to a prosperous economy and a higher standard of living. The Court finds that there is a preponderance of evidence showing that any conceivable anticompetitive effect of the merger is clearly outweighed by the effects of the transaction in meeting the needs and convenience of the community to be served.

CONCLUSION

For the reasons stated the Court finds that plaintiff has failed to establish by a preponderance of the evidence that the proposed merger would have any anticompetitive effect and, further, that even if there were *de minimis* anticompetitive effect in the narrowly drawn market proposed by the government, such effect is clearly outweighed by the convenience and needs of the community to be served by the merged bank.

An appropriate order may be submitted for entry of judgment in favor of defendants and the intervenor and against plaintiff without costs.

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[6] "Of course, some of the results of large integrated or chain operations are beneficial to consumers. Their expansion is not rendered unlawful by the mere fact that small independent stores may be adversely affected. It is competition, not competitors, which the Act protects. But we cannot fail to recognize Congress' desire to promote competition through the protection of viable, small, locally owned businesses. Congress appreciated that occasional higher costs and prices might result from the maintenance of fragmented industries and markets. It resolved these competing considerations in favor of decentralization. We must give effect to that decision." *Id.* at 344.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil No. 56–68

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY AND THE SECOND NATIONAL BANK OF PHILLIPSBURG, DEFENDANTS

and

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR

Judgment

This action having come on for trial before the Court, Honorable Robert Shaw, District Judge, presiding, and the Court having considered the testimony and evidence presented and the arguments of counsel, and the Court having rendered and filed an Opinion herein dated October 14, 1969, and in accordance with the Opinion,

IT IS, on this 20th day of October, 1969,

ORDERED AND ADJUDGED that judgment be entered in favor of the defendants and the intervenor and against the plaintiff, plaintiff's prayer for relief is denied, and the action be and it is hereby dismissed with prejudice and without costs.

ROBERT SHAW
U.S.D.J.

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

(CAPTION OMITTED IN PRINTING)

ORDER

Upon the motion of the plaintiff herein, it is hereby ORDERED that the statutory stay set forth in Public Law 89-356, 80 Stat. 7 (12 U.S.C. § 1828(c)), as amended, be and the same hereby is continued for a period of FORTY days from the date of judgment in this cause and, if an appeal is noticed prior to the expiration of said FORTY day period, until disposition of the cause.

/s/ Robert Shaw
United States District Judge

Dated: October 20, 1969

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

(CAPTION OMITTED IN PRINTING)

MOTION TO RE-OPEN THE RECORD
AND TO AMEND THE FINAL FINDINGS
OF FACT AND CONCLUSIONS OF LAW

Comes now the United States of America, plaintiff herein, and, pursuant to Rules 52(b) and 59(a) of the Federal Rules of Civil Procedure, respectfully moves this Honorable Court as follows:

(1) To direct the re-opening of the Record herein for the limited purpose of admitting into evidence facts relating to commercial bank merger and branching activity within the First Banking District of New Jersey following the enactment of Pamphlet Laws 1968, Chapter 415, N.J.S.A. 17: 9A-19, approved January 17, 1969 and effective July 17, 1969; and

(2) To amend the Findings of Fact and Conclusions of Law as set forth in the decision and opinion of this Court, filed herein and dated October 14, 1969, to conform with the aforementioned facts relating to commercial bank merger and branching activity within the First Banking District of New Jersey.

Respectfully submitted,

/s/ ALAN R. MALASKY
Attorney
Department of
Washington, D. C. 20530

Attorney for the Plaintiff

FREDERICK B. LACEY
United States Attorney

By: B. DENNIS O'CONNOR
Ass't United States Attorney

Dated: October 20, 1969

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil No. 56-68

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY and THE SECOND NATIONAL BANK OF PHILLIPSBURG,

Defendants,

and

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY,

Intervenor.

ORDER

ORDERED this 2nd day of January, 1970, that the word and figure "Total 197,421" appearing on page 13 of the filed opinion be and the same hereby is stricken and the word and figure "Total 215, 923" be and the same hereby is inserted at the end of the columns captioned "Population" immediately above the footnote "Population figures taken from 1960 census."

Robert Shaw
U. S. D. J.

In the Supreme Court of the United State

No. **1093** ——, *October Term, 1969*

United States,

Appell

v.

Phillipsburg National Bank and
Trust Company et al.

APPEAL from the United States District Court for t
District of New Jersey.

The statement of jurisdiction in this case having be
submitted and considered by the Court, probable jurisdictio
is noted and the case is placed on the summary calendar.

February 27, 1970

OFFICE COPY

Office-Supreme Court, U.S.
FILED
APR 13 1970
JOHN F. DAVIS, CLERK

APPENDIX
Volume II (Exhibits)

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1093

UNITED STATES OF AMERICA,
Appellant,

v.

PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY, SECOND NATIONAL BANK OF PHILLIPSBURG, AND WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Probable Jurisdiction Noted February 27, 1970

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INTERROGATORIES NOS. 1 AND 2

1. Describe each banking service (e.g. types of deposit accounts, loan accounts, safe deposit rentals, trust services, etc.) offered both by Phillipsburg National and Second National during the period 1965 through 1967, and

a. Indicate each service offered by Phillipsburg National which was not offered by Second National during that period.

b. Indicate each service offered by Second National which was not offered by Phillipsburg National during that period.

c. For each of the above-described services give the dates during the period 1965 through 1967 that they were in effect.

2. For each banking service enumerated in response to Interrogatory 1, offered by Phillipsburg National and/or Second National, state the service and collection charges, interest rates paid and received, commissions, fees, restrictions and other charges applicable as of December 31, 1967, and describe any changes effectuated therein since January 1, 1965, giving the date of each such change.

ANSWERS TO INTERROGATORIES NOS. 1 AND 2

2 CHARGES

Services offered by Phillipsburg National & Second National	Phillipsburg National	Second National
(1) Checking Accounts	SEE RIDER A.....	
(2) Savings Accounts	3-1/2%	3-1/2%
(3) Time-Deposits-Open Accounts	3-1/2 - 4%	3-1/2-4
(4) Certificates of Deposit	4-5%	4-5%
(5) Christmas & Vacation Clubs	None	None
(6) Escrow Services	None	None
(7) Safe Deposit box rental	$3 - 100/yr.	$3-12/yr.
(8) Sale of Travellers Checks & Bank money orders	1% of amt. purch. .10/check before Nov. 1967; .25/ check thereafter	1% of amt. .15/check (raised to in 1968)
(9) Cashiers Checks	*	*
(10) Conventional, VA & Construction Mortgages	6%	6%
(11) Collateral, Commercial, Agricultural, Consumer installment & single payment	SEE RIDER B.....	
(12) Sale reissue and redemption of U.S. Savings Bonds	standard govt fees.....	
(13) Collections	$.25 to 1/10 of 1% or $5.00 max.	$1.00 to 1/1 1% or $5.00
(14) Utility Collections	$.05/stub	$.05/stub
(15) Trust Services */	SEE RIDER C.....	
(a) Phillipsburg National services not offered by Second National		
(1) School Savings	3-1/2%	———
(2) FHA Mortgages	6%	———

(b) None

(c) All services offered throughout entire period.

* Modified in accordance with defendants' letter dated March 21, 1968 (attached).

RIDER A

PHILLIPSBURG NATIONAL BANK AND TRUST CO.
Phillipsburg, N.J.

Schedule of charges--regular checking accounts

Balance	No. of Checks Permitted Without Charge	Charge for Each Excess Check
$400 to $499.99	20	5c
$300 to $399.99	15	5c
$200 to $299.99	10	5c
$.01 to $199.99	None*	

Analysis as per Statement.
*Accounts having a balance below $200.00 are charged for each check charged to account.

SECOND NATIONAL BANK of PHILLIPSBURG

Our Service Charge schedule for Personal Checking Accounts are as follows: With a low monthly balance of $.01 to $99.99 there is a monthly base charge of $1.00 with 10 checks permitted and a charge of $.05 for each excess check. With a low monthly balance of $100.00 to $199.99 there is a monthly bas charge of $.50 with 10 checks permitted and a charge of $.05 for each excess check. With a low monthly balance of $200.00 to $299.99 there is no base charge but only 10 checks are permitted and there is a charge of $.05 for each excess check. With a low monthly balance of $300.00 to $399.99 there is no base charge and 15 checks are permitted with a charge of $.05 for each excess check. With a low monthly balance of $400.00 to $499.99 there is no base charge and 20 checks are permitted with a charge of $.05 for each excess check.

[RIDER A continued]

Checking accounts with activity in excess of 20 checks per month are analyzed and our schedule for analyzing accounts as of December 31, 1967 is as follows: Checks Paid - $.05 each; Listed Checks - $.03 each; Transit Items - $.03 each; Clearing House Items - $.01 each; Deposits - $.05 each; Account Maintenance - $.25.

Our charge for returning or paying NSF Items as of December 31, 1967 - $2.00.

RIDER B

PHILLIPSBURG NATIONAL	SECOND NATIONAL
4-1/2%-6% on collateral commercial* and agricultural loans	4-1/2%-6% on collateral commercial* and agricultural loans
4-1/2%-6% add - on; on consumer loans	4-1/2-6% add - on; on consumer loans
4-1/2%-6% discount on single payment loans	4-1/2%-6% discount on single payment loans

*(one corporate commercial loan made at 7% interest as participation)

(RIDER C)

FEES ON TRUSTS

Over and above their actual expenses, the compensation of fiduciaries is computed as follows:

6% of all income that comes into their hands.

If there is one fiduciary, its commissions on corpus are 5% when corpus receipts do not exceed $100,000. When corpus receipts exceed $100,000, commissions are 5% on the first $100,000 and, on the excess over $100,000, an amount determined by the court but not more than 5% of the excess.

If there are two or more fiduciaries, their commissions on corpus are the same as provided for one fiduciary. In addition, the court may allow corpus commissions in excess of the commissions to which one fiduciary would be entitled, at a rate not exceeding 1% of all corpus for each additional fiduciary.

If the administration of the fiduciary or fiduciaries extends beyond 25 years, the court shall allow, for such additional years, annual commissions of not more than 1/5 of 1% of the corpus, irrespective of the number of fiduciaries.

M. T. Jenkins

CARPENTER, BENNETT & MORRISSEY

JAMES D. CARPENTER
CARL S. RUEBLER
CHARLES M. COOMBS, JR.
CHARLES B. COLLINS
ELMER J. BENNETT
THOMAS L. MORRISSEY
NATHAN M. LIZZA
MARVIN LLOYD LEWIS

LAURENCE REICH
STANLEY WEISS
AUGUSTUS NASMITH
N. LOUIS PALADEAU
EDWARD F. RYAN
JOHN C. HEAVEY, JR.
JEROME J. GRAHAM, JR.
VIRGINIA D. FENTON

SYLVESTER C. SMITH, JR., OF COUNSEL

LAW OFFICES
744 BROAD STREET
NEWARK, N. J. 07102

TELEPHONES
NEW JERSEY 642-4230
(AREA CODE 201)
NEW YORK 943-6530
(AREA CODE 212)

March 21, 1968

Robert C. Weinbaum, Esq.
Department of Justice
Washington, D.C.

Re: U.S. v. Phillipsburg & Second National

Dear Mr. Weinbaum:

In meeting the deadline to prepare the Answers to Interrogatories served upon you Wednesday, there resulted a few omissions to those Answers which I should like to correct by way of this letter. The answer to Interrogatory #1 should be amended to include "trust services" and the answer to Interrogatory #2 to include the fees set forth in the rider attached hereto. As regards Second National, Interrogatory #8(a)(4) should read: $11,118,359.02; and Interrogatory #8(a)(5) should read: 9 accounts, $112,729.09.

I hope you will accept this letter as an amendment to our Answers to Interrogatories. Should you require more formal amendment, kindly advise me and I shall provide same.

Very truly yours,

CARPENTER, BENNETT & MORRISSEY

Michael S. Waters

By: Michael S. Waters

MSW/lrk
Enc.

cc: Gov. Robert B. Meyner
Mr. Lester D. Pursell
Joseph Curry
Philip L. Roache, Jr., Esq.
Nevins Baxter

60-111-1222
DEPARTMENT OF JUSTICE
17 MAR 25 1968
R.A.O.
RECORD
ANTITRUST

GX 6

INTERROGATORY NO. 5

5. State the legal lending limits of Phillipsburg National and Second National, respectively, for each of the years 1964 through 1967, indicating the method by which the lending limits for each year were determined.

ANSWER TO INTERROGATORY NO. 5

#5. Both banks have employed lending limits of 10% of Capital and Surplus. For PN this would allow $90,000 for the years 1964-1967. For Second National this would allow $72,000 in 1964 and $80,000 for the years 1965 through 1967.

When necessary, both banks have used a lending limit of 10% if Capital, surplus, undivided profits and reserves as approved by the Comptroller, and resulting in the following limits:

	PN	SN
1964	$127,769	$119,311 */
1965	112,751	125,839
1966	115,427	130,051
1967	120,326	$131,468.

*/ Figures for 1964 - 1966 were supplied in a letter from counsel for Second National, dated June 12, 1968.

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INTERROGATORY NO. 7

7. State whether, during the period 1962 through March 31, 1967, either Phillipsburg National or Second National gave any consideration to increasing its capitalization and, if so, state the means by which it was proposed that such capitalization be increased.

ANSWER TO INTERROGATORY NO. 7

#7 During the period in question Phillipsburg National recognizing that its capitalization was low, considered increasing its capitalization in discussions among its directors, but no proposal was submitted to shareholders.

During said period Second National declared a stock dividend of 2,200 shares and then issued 800 new shares, selling same to its then current shareholders, in order to round out its capital to $250,000.

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INTERROGATORY NO. 17

17. With regard to each officer and/or director of Phillipsburg National and Second National, respectively, as of March 31, 1967, set forth a brief biographical sketch similar to those found at pages 17-19 of the Application to the Comptroller, including age, education, business and banking experience, and positions held at bank.

ANSWER TO INTERROGATORY NO. 17

Second National

17. DIRECTORS - THOMAS B. ARMSTRONG - 61 College graduate. Electrical engineer. Former Vice-President of New York Transformer. Elected Director of Second National in 1954. JOHN H. BAKER - 73 Owner of Pollock Brush Co. of Easton, Pennsylvania. Elected to Board of Second National in 1952. Elected Vice President in 1959. Mr. Baker is now deceased having died on January 13, 1968. WILLIAM C. GOSSER - 62 Owner of Twin City Appliance. Elected to Board of Second National in 1954. WILLIAM M. NORTON - 51 Owner of Norton Oil Co. and Norton's Liquor Stores. Commissioner of Town of Phillipsburg. Elected to Board of Second National in 1959. HARRY S. PURSEL - 79 Grain and farm supply dealer. Elected to Board of Second National in 1924. Vice-President from 1947 to 1956 and President since 1956. LESTER D. PURSELL - 69 Employed by Second National since 1921. Served as Teller, Assistant Cashier, Cashier, and currently Executive Vice -President. Elected to Board in 1959. ALFRED W. SEISS - 57 Lawyer. Elected to Board of Second National in 1956. HAROLD D. SMITH - 82 College graduate. Son of founder and first President of Second National. Elected to Board of Second National in 1959. PATSY TERSIGNI - 56 Owner of Tersigni Oldsmobile Agency. Elected to Board of Second National in 1964.

SECOND NATIONAL

OFFICERS = HARRY S. PURSEL - 79, President and LESTER D. PURSELL - 69, Executive Vice President are also on the Board of Directors. RICHARD C. DAUBERT - 39, Cashier. Graduated from Easton High School in 1946. He later received his standard certificate from the American Institute of Banking. Past President of the Easton-Phillipsburg Chapter of the American Institute of Banking, Current Secretary and Past President of the Easton-Phillipsburg Clearing House Association, Serves on the Board of Directors of the Phillipsburg Area Chamber of Commerce, and is a member of the Board of Directors of the Penn-Jersey Great Valley Chapter of the Bank Administration Institute. He was employed in 1946 and 1947 as head bookkeeper with the Easton Trust Company. From 1947 to 1951 he was employed as accounts receivable bookkeeper at Chipman Knitting Mills, Easton, Pennsylvania. In 1951 he began his employment at the Second National Bank as a bookkeeper. He advanced to the note and loan departmen where he was made Assistant Cashier and in 1964 he was promoted to Cashier. ROBERT E. DUCKWORTH - 58, Assistant Vice President & Branch Manager. Graduated from Phillipsburg High School in 1928 and attended Rider College, Trenton, New Jersey. Started work at the Lafayette Trust Co. in 1929 working in different departments. He left in 1948 and worked for Worline Oil Co., Holland Furnace Co., & J.T. Baker Chemical Co. before joining the staff of the Easton National Bank at the time of the merger in 1951 with Easton Trust Co. as assistant cashier Was employed by Second National Bank in 1961 and opened the Branch office as Branch Manager in October of 1961. He has taken American Institute of Banking courses and has a certificate from the New Jersey Bankers Association for completing a two year course in Public Relations at Princeton in 1964. He is a past president of the Easton-Phillipsburg Chapter of the American Institute of Banking and a present secretary-treasurer and past president of the Warren County Bankers Association. CLARENCE A. KARCHER - 44, Assistant Cashier. Graduated from Phillipsburg High School in 1941 and is a graduate accountant of The Churchman Business College Class of 1948. He worked for three years at the Phillipsburg Trust Company doing note work and later teller work. He has been employed by the Second National Bank for the last 17 years as a teller and in January of 1965 he was promoted to Assistant Cashier. He attended the American Institute of Banking courses for 8 years and has his standard certificate. He is a past trustee of the Easton-Phillipsburg Chapter of the

Chapter of the Bank Administration Institute, and is a Notary Public of the State of New Jersey. STANLEY W. MEIXSELL - 35, Assistant Cashier. Graduated from Easton High School in 1950. In September of 1950 attended Churchman Business College and completed a two year course in December of 1951. After graduating from Churchman's he worked at Hummell Lumber Co. of Easton, Pennsylvania for 18 months as a general clerk. He was hired by the Second National Bank in August 1952 as a bookkeeper. In 1959 he was made a teller and worked both at the main office and the Branch office. In 1964 he was made a note and loan clerk and in February 1966 was promoted to Assistant Cashier. JESS H. RUBERT - 82, Assistant Cashier. No formal education. In 1910 was employed by the Phillipsburg Post Office as a regular mail carrier until December 10, 1918 when he began his career with the Second National Bank. He worked in the note and loan department and in 1956 was named as Assistant Cashier.

#17 - Phillipsburg National

PHILLIP F. TIRRELL - 82
Chairman of the Board and Trust Officer of Phillipsburg National. Retired silk manufacturer and farmer. Member of the Board since 1924. Prior to election as Chairman in 1966 was President of the Bank since 1962.

HAROLD J. CURRY - 70
President and Assistant Trust Officer of Phillipsburg National. College graduate. Employed since 1923. Elected President in 1966. Past president of New Jersey Bankers Association.

HERMAN BEERS - 64
Treasurer of Pohatcong Township for many years. In business as horticulturist. Elected to Board of Phillipsburg National in 1965.

C. LAMONT BIDWELL - 60
College graduate. Lives in Holland Township in Hunterdon County. Vice-President of Riegel Paper Corporation in Hunterdon. Director of Phillipsburg National since 1964.

JOHN J. CANE - 59
College graduate. Dentist in Phillipsburg. Member of State Public Health Council. Director of Phillipsburg National since 1945.

JOHN B. CLINE - 78
College graduate. Retired farmer. On Board of Phillipsburg National since 1925.

LOUIS HAJDU - 45
Building contractor, commercial and residential. Member of Board of Phillipsburg National since 1965.

ROBERT B. MEYNER - 58
Lawyer. Served two terms as Governor of New Jersey. Member of Board of Phillipsburg National since 1948. Member of Boards of First National State Bank and U. S. Savings Bank in Newark, New Jersey.

CHARLES E. RITTENHOUSE - 58
Phillipsburg High School graduate of 1928. Attended Churchman Business College and obtained pre-standard A.I.B. certificate. Received credit for other A.I.B. courses given at Lafayette College. Graduate of the New Jersey Bankers Association Public Relations School at Princeton, N. J. Employed from 1928 to 1942 at the Phillipsburg Trust Co. as teller and note teller. Enlisted and served with the U.S. Marine Corps from 1942 to 1946. Employed as a teller at the Phillipsburg National Bank & Trust Co. from 1946 to 1956. Elected asst. cashier March 23, 1951, and cashier on Jan. 12,

SARA F. RAMBO National
Graduated
National Janu .
July 1933, wo - 53
general bookk Phillipsburg High School 1931. Employed Phillipsburg
9/25/42. As ary 1932 - January 1933. Laid off 6 months. Returned
versity (Coll rked until September 1942. Worked as bookkeeper,
Bureau of Sup eeper and in note department. Enlisted U.S. Navy
Last assignme WAVE attended Navy Storekeeper School at Indiana Uni-
of Mustering ege of Business) for 4 months. Stationed 3 years at
Served in all plies and Accounts achieving rate of Chief Storekeeper.
ment and savi nt was as Supervisor of Refund and Adjustments Section
Assistant Cas Out Payment Division. Rehired by bank May 1954.
Records and P departments, including commercial teller, loan depart-
President. ngs department, and trust department. Appointed
hier January 1959. Now assigned to Purchasing Personnel

JOSEPH G. VA ayroll. Acting as receptionist and secretary to the
Graduate
College two y
graduate. St
at Pennsylva GA - 40
Baker Chemic Phillipsburg Catholic High School. Attended Lafayette
National Bank ears. A.I.B. courses - pre-standard, standard and
teller 1951- hier Graduate School of Banking, one year. Employed
cashier Janua a Salt Co. as chemical analayist 1947 to 1950; J.T.
l Co. as quality control chemist 1950-1951; Phillipsburg
& Trust Company, May 1951 to present. Commercial

BARBARA ATEL 960, note teller 1960-1963, and promoted to assistant
Attended y 1963.
school. Grad
in 1946. At
Phillipsburg - 40
in Phillipsb nd graduated from St. Philip & St. James elementary
attendant an ate of St. Philip and St. James Parochial High School
Savings Bond nded A.I.B. School 1947-1948. Entered employment of
assistant bo ational Bank & Trust Company October 14, 1946. Started
bookkeeper w g National Bank as miscellaneous clerk, typist, vault
which time b secretary. Worked part time in Savings Dept. and U.S.
General Book ept. up to 1948 when entered Bookkeeping Dept. as secon
attendant an keeper. Became first assistant bookkeeper and head
ceiving tell in same year. Worked as Head Bookkeeper to 1952 at
Assistant Cash Hillcrest Brame General Ledger Bookkeeper and Secretary. Worked as
eper, did credit work, telephone operator, vault
secretary to 1960. Became part time paying and re-

EUGENE D. KA and School Savings Teller at that time. Appointed
Graduate er January 11, 1963. Have worked as teller in
Four courses ch and worked in the initial opening of the Alpha Branch
bookkeeping
Promoted to

- 34
ELIZABETH V. of St. Philip & St. James grammar and high school.
Graduate A.I.B. School. Twelve years in banking. Four years
College. Co partment. Eight years paying and receiving teller.
Bank Company istant Cashier, January 1966.
Asst. Genera
Assistant Tr

BORELLI - 58
Phillipsburg High School and Churchman's Business
er 26, 1928 started in Phillipsburg National Bank
Worked in bookkeeping department, savings depart-
dger Bookkeeper, and trust work. Promoted to
Officer on October 13, 1950.

Phillipsburg National
cont'd.

ANTHONY F. STILLO; age 38. Graduate high school. Serve 4 years Marine Corps. Attended Churchmans Business College 2 years. Employed by American Finance Corporation 1952-1962 as manager of the Phillipsburg Office. Employed as Consumer Loan Officer at Union Bank & Trust Co., Bethlehem, Pa. 1962 - 1963 with total installment loan department of Thirty million dollars. Employed by Phillipsburg National 1963 as consumer loan officer. Attended AIB school 1964 to present.

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INTERROGATORIES NOS. 25 AND 26

25. Specify with regard to Phillipsburg National and Second National, respectively, for the years 1966 and 1967, total expenditures for the following:

a. Newspaper and magazine advertising;

b. Radio and television commercials, including sponsorship of programs;

c. Direct mail advertising (including copy sent out with monthly statements);

d. Other forms of advertisement, including goodwill sponsorship of civic events.

26. Identify each publication or broadcasting station which carried the advertising referred to in Interrogatory 25.

ANSWERS TO INTERROGATORIES NOS. 25 AND 26

25. The total expenditures of the Second National Bank during the years 1966 and 1967 for the below are:

a/ Newspaper and magazine advertising: 1966 - $5,470.93; 1967 - $7,499.39.

b/ Radio and television commercials, including sponsorship of programs: 1966 - None; 1967 - None.

c/ Direct mail advertising: 1966 - None; 1967 - None.

d/ Other forms of advertisement, including goodwill sponsorship of civic events: 1966 - $1,055.00; 1967 - $5,320.00.

#25. Total expenditures by Phillipsburg National during 1966 and 1967 for the following were

		1966	1967
a.	Newspaper and magazine advertising	$4,391.05	$5,111.
b.	Radio advertising	2,449.02	1,960.
c.	Direct mail advertising	97.75	136.
d.	Other advertising	2,848.98	3,169.

#26. The publications that contain advertising of the Second National Bank as referred to in the previous question are:

(a) The Easton Publishing Company (Easton Express) and the Phillipsburg Free Press

(b) None

(c) None

(d) Miscellaneous program and memorial booklets

Phillipsburg National:

Radio Stations W E S T and W E E X, both in Easton, Pa--Easton Express of Easton, Pa. and Free Press of Phillipsburg, N.J. Miscellaneous program and memorial booklets.

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TOTAL DEPOSITS OF PHILLIPSBURG NATIONAL BANK, BY CLASS SIZE, BY LOCATION OF DEPOSITOR, DECEMBER 30, 1967

(Dollar amounts in thousands)

	NUMBER		DOLLAR AMOUNT		NUMBER		DOLLAR AMOUNT	
	No.	Percent	Amount	Percent	No.	Percent	Amount	Percent
	All Class Sizes				$10,001 - $50,000			
Phillipsburg and environs	16,051	86.3%	$18,191.7	81.4%	405	82.0%	$4,839.3	78.4%
Easton and environs	985	5.3	1,357.9	6.1	29	5.9	442.0	7.2
Subtotal: Phillipsburg & Easton	17,036	91.6	19,549.6	87.4	434	87.9	5,281.3	85.6
Outside Areas	1,558	8.4	2,808.0	12.6	60	12.1	889.1	14.4
Total	18,594	100.0	22,357.6	100.0	494	100.0	6,170.4	100.0
	$1 - $1,000				Over $50,000			
Phillipsburg and environs	11,881	85.7%	1,952.2	85.5	19	76.0%	$2,426.3	77.6
Easton and environs	814	5.9	126.5	5.5	1	4.0	146.8	4.7
Subtotal: Phillipsburg & Easton	12,695	91.6	2,078.7	91.1	20	80.0	2,573.1	82.3
Outside Areas	1,165	8.4	203.9	8.9	5	20.0	554.5	17.7
Total	13,860	100.0	2,282.6	100.0	25	100.0	3,127.6	100.0
	$1,001 - $10,000							
Phillipsburg and environs	3,746	88.0%	$8,973.9	83.3				
Easton and environs	181	4.3	642.6	6.0				
Subtotal: Phillipsburg & Easton	3,927	92.3	9,616.5	89.2				
Outside Areas	328	7.7	1,160.7	10.8				
Total	4,255	100.0	10,777.2	100.0				

Note: Detail may not always add to total due to rounding.

Source: Defendant's Answer to Plaintiff's Interrogatory No. 8.

TOTAL DEPOSITS OF SECOND NATIONAL BANK, BY CLASS SIZE, BY LOCATION OF DEPOSITOR, DECEMBER 30, 1967

(Dollar amounts in thousands)

	NUMBER		DOLLAR AMOUNT		NUMBER		DOLLAR AMOUNT	
	No.	Percent	Amount	Percent	No.	Percent	Amount	Percent
	All Class Sizes				$10,001 - $50,000			
Phillipsburg and environs	7,557	83.0%	$13,286.2	83.0%	270	80.4%	$4,189.0	81.9%
Easton and environs	821	9.0	928.3	5.8	26	7.7	224.6	4.4
Subtotal: Phillipsburg & Easton	8,378	92.0	14,214.5	88.8	296	88.1	4,413.6	86.3
Outside Areas	725	8.0	1,790.7	11.2	40	11.9	701.1	13.7
Total	9,103	100.0	16,005.2	100.0	336	100 0	5,114.7	100.0
	$1 - $1,000				Over $50,000			
Phillipsburg and environs	5,451	82.9	1,011.1	81.6	10	71.4	1,138.2	79.2
Easton and environs	637	9.7	117.3	9.5	-	-	-	-
Subtotal: Phillipsburg & Easton	6,088	92.6	1,128.4	91.1	10	71.4	1,138.2	79.2
Outside Areas	489	7.4	110.5	8.9	4	28.6	299.5	20.8
Total	6,577	100.0	1,238.9	100.0	14	100.0	1,437.7	100.0
	$1,001 - $10,000							
Phillipsburg and environs	1,826	83.9	6,947.8	84.6				
Easton and environs	158	7.3	586.4	7.1				
Subtotal: Phillipsburg & Easton	1,984	91.2	7,534.2	91.7				
Outside Areas	192	8.8	679.6	8.3				
Total	2,176	100.0	8,213.8	100.0				

Note: Detail may not always add to total due to rounding.

Source: Defendant's Answer to Plaintiff's Interrogatory No. 8.

DEMAND DEPOSITS OF PHILLIPSBURG NATIONAL BANK, BY CLASS SIZE, BY LOCATION OF DEPOSITOR, DECEMBER 30, 1967

(Dollar amounts in thousands)

	NUMBER		DOLLAR AMOUNT		NUMBER		DOLLAR AMOUNT	
	No.	Percent	Amount	Percent	No.	Percent	Amount	Percent
	All Class Sizes				$10,001 - $50,000			
Phillipsburg and environs	3,474	79.8%	$5,071.4	77.5%	57	72.2%	$1,152.8	74.1%
Easton and environs	363	8.3	399.2	6.1	4	5.1	61.8	4.0
Subtotal: Phillipsburg & Easton	3,837	88.1	5,470.6	83.7	61	77.2	1,214.6	78.1
Outside Areas	518	11.9	1,071.2	16.4	18	22.8	341.4	21.9
Total	4,355	100.0	6,541.8	100.0	79	100.0	1,556.0	100.0
	$1 - $1,000				Over $50,000			
Phillipsburg and environs	2,908	80.1	919.8	84.5	13	72.2	1,655.0	76.8
Easton and environs	312	8.6	72.1	6.6	1	5.6	146.8	6.8
Subtotal: Phillipsburg & Easton	3,220	88.7	991.9	91.2	14	77.8	1,801.8	83.6
Outside Areas	410	11.3	96.3	8.8	4	22.2	354.5	16.4
Total	3,630	100.0	1,088.2	100.0	18	100.0	2,156.3	100.0
	$1,001 - $10,000							
Phillipsburg and environs	496	79.0	1,343.8	77.2				
Easton and environs	46	7.3	118.5	6.8				
Subtotal: Phillipsburg & Easton	542	86.3	1,462.3	84.0				
Outside Areas	86	13.7	279.1	16.0				
Total	628	100.0	1,741.4	100.0				

Note: Detail may not always add to total due to rounding.

Source: Defendant's Answer to Plaintiff's Interrogatory No. 8.

DEMAND DEPOSITS OF SECOND NATIONAL BANK, BY CLASS SIZE, BY LOCATION OF DEPOSITOR, DECEMBER 30, 1967

(Dollar amounts in thousands)

	NUMBER		DOLLAR AMOUNT		NUMBER		DOLLAR AMOUNT	
	No.	Percent	Amount	Percent	No.	Percent	Amount	Percent
	All Class Sizes				$10,001 - $50,000			
Phillipsburg and environs	2,135	81.1%	$3,707.4	81.5%	52	82.5%	$1,239.4	83.8%
Easton and environs	252	9.6	153.0	3.4	2	3.2	37.2	2.5
Subtotal: Phillipsburg & Easton	2,387	90.7	3,860.4	84.8	54	85.7	1,276.6	86.3
Outside Areas	246	9.3	690.0	15.2	9	14.3	203.1	13.7
Total	2,633	100.0	4,550.4	100.0	63	100.0	1,479.7	100.0
	$1 - $1,000				Over $50,000			
Phillipsburg and environs	1,749	81.0	468.8	81.2	9	69.2	1,056.6	77.9
Easton and environs	223	10.3	49.8	8.6	-	-	-	-
Subtotal: Phillipsburg & Easton	1,972	91.3	518.6	89.8	9	69.2	1,056.6	77.9
Outside Areas	187	8.7	58.6	10.2	4	30.8	299.5	22.1
Total	2,159	100.0	577.2	100.0	13	100.0	1,356.1	100.0
	$1,001 - $10,000							
Phillipsburg and environs	325	81.7	942.6	82.9				
Easton and environs	27	6.8	66.0	5.8				
Subtotal: Phillipsburg & Easton	352	88.4	1,008.6	88.7				
Outside Areas	46	11.6	128.8	11.3				
Total	398	100.0	1,137.4	100.0				

Note: Detail may not always add to total due to rounding.

Source: Defendant's Answer to Plaintiff's Interrogatory No. 8.

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IPC DEMAND DEPOSITS OF PHILLIPSBURG NATIONAL BANK, BY CLASS SIZE, BY LOCATION OF DEPOSITOR, DECEMBER 30, 1967

(Dollar amounts in thousands)

	NUMBER		DOLLAR AMOUNT		NUMBER		DOLLAR AMOUNT	
	No.	Percent	Amount	Percent	No.	Percent	Amount	Percent
	All Class Sizes				$10,001 - $50,000			
Phillipsburg and environs	3,451	79.8%	$4,253.0	76.6%	51	70.8%	$1,037.3	72.6%
Easton and environs	363	8.4	399.2	7.2	4	5.6	61.8	4.3
Subtotal: Phillipsburg & Easton	3,814	88.2	4,652.2	83.8	55	76.4	1,099.1	76.9
Outside Areas	512	11.8	898.5	16.2	17	23.6	330.1	23.1
Total	4,326	100.0	5,550.7	100.0	72	100.0	1,429.2	100.0
	$1 - $1,000				Over $50,000			
Phillipsburg and environs	2,903	80.1	735.7	81.4	9	69.2	1,161.2	76.7
Easton and environs	312	8.6	72.1	8.0	1	7.7	146.8	9.7
Subtotal: Phillipsburg & Easton	3,215	88.7	807.8	89.4	10	76.9	1,308.0	86.4
Outside Areas	409	11.3	96.2	10.6	3	23.1	205.8	13.6
Total	3,624	100.0	904.0	100.0	13	100.0	1,513.8	100.0
	$1,001 - $10,000							
Phillipsburg and environs	488	79.1	1,318.8	77.4				
Easton and environs	46	7.5	118.5	7.0				
Subtotal: Phillipsburg & Easton	534	86.5	1,437.3	84.4				
Outside Areas	83	13.5	266.4	15.6				
Total	617	100.0	1,703.7	100.0				

Note: Detail may not always add to total due to rounding.

Source: Defendant's Answer to Plaintiff's Interrogatory No. 8.

IPC DEMAND DEPOSITS OF SECOND NATIONAL BANK, BY CLASS SIZE, BY LOCATION OF DEPOSITOR, DECEMBER 30, 1967

(Dollar amounts in thousands)

	NUMBER		DOLLAR AMOUNT		NUMBER		DOLLAR AMOUNT	
	No.	Percent	Amount	Percent	No.	Percent	Amount	Percent
	All Class Sizes				$10,001 - $50,000			
Phillipsburg and environs	2,114	81.2%	$3,197.2	84.7%	50	83.3%	$1,194.5	84.2%
Easton and environs	252	9.7	153.0	4.1	2	3.3	37.2	2.6
Subtotal: Phillipsburg & Easton	2,366	90.8	3,350.2	88.7	52	86.7	1,231.7	86.8
Outside Areas	239	9.2	425.9	11.3	8	13.3	186.7	13.2
Total	2,605	100.0	3,776.1	100.0	60	100.0	1,418.4	100.0
	$1 - $1,000				Over $50,000			
Phillipsburg and environs	1,735	80.9	464.0	81.1	7	87.5	621.6	91.0
Easton and environs	223	10.4	49.8	8.7	-	-	-	-
Subtotal: Phillipsburg & Easton	1,958	91.3	513.8	89.8	7	87.5	621.6	91.0
Outside Areas	186	8.7	58.2	10.2	1	12.5	61.6	9.0
Total	2,144	100.0	572.0	100.0	8	100.0	683.2	100.0
	$1,001 - $10,000							
Phillipsburg and environs	322	81.9	917.1	83.2				
Easton and environs	27	6.9	66.0	6.0				
Subtotal: Phillipsburg & Easton	349	88.8	983.1	89.2				
Outside Areas	44	11.2	119.5	10.8				
Total	393	100.0	1,102.6	100.0				

Note: Detail may not always add to total due to rounding.

Source: Defendant's Answer to Plaintiff's Interrogatory No. 8.

TIME AND SAVINGS DEPOSITS OF PHILLIPSBURG NATIONAL BANK, BY CLASS SIZE, BY LOCATION OF DEPOSITOR, DECEMBER 30, 1967

(Dollar amounts in thousands)

	NUMBER		DOLLAR AMOUNT		NUMBER		DOLLAR AMOUNT	
	No.	Percent	Amount	Percent	No.	Percent	Amount	Percent
	All Class Sizes				$10,001 - $50,000			
Phillipsburg and environs	12,577	88.1%	$13,120.3	83.0%	348	83.8%	$3,686.5	79.9%
Easton and environs	622	4.6	958.7	6.1	25	6.0	380.2	8.2
Subtotal: Phillipsburg & Easton	13,199	92.7	14,079.0	89.1	373	89.9	4,066.7	88.1
Outside Areas	1,040	7.3	1,736.8	10.9	42	10.1	547.7	11.9
Total	14,239	100.0	15,815.8	100.0	415	100.0	4,614.4	100.0
	$1 - $1,000				Over $50,000			
Phillipsburg and environs	8,973	87.7	1,032.4	86.4	6	85.7	771.3	79.4
Easton and environs	502	4.9	54.4	4.6	-	-	-	-
Subtotal: Phillipsburg & Easton	9,475	92.6	1,086.8	91.0	6	85.7	771.3	79.4
Outside Areas	755	7.4	107.6	9.0	1	14.3	200.0	20.6
Total	10,230	100.0	1,194.4	100.0	7	100.0	971.3	100.0
	$1,001 - $10,000							
Phillipsburg and environs	3,250	89.6	7,630.1	84.4				
Easton and environs	135	3.7	524.1	5.8				
Subtotal: Phillipsburg & Easton	3,385	93.3	8,154.2	90.2				
Outside Areas	242	6.7	881.6	9.8				
Total	3,627	100.0	9,035.8	100.0				

Note: Detail may not always add to total due to rounding.

Source: Defendant's Answer to Plaintiff's Interrogatory No. 8.

TIME AND SAVINGS DEPOSITS OF SECOND NATIONAL BANK, BY CLASS SIZE, BY LOCATION OF DEPOSITOR, DECEMBER 30, 1967

(Dollar amounts in thousands)

	NUMBER		DOLLAR AMOUNT		NUMBER		DOLLAR AMOUNT	
	No.	Percent	Amount	Percent	No.	Percent	Amount	Percent
	All Class Sizes				$10,001 - $50,000			
Phillipsburg and environs	5,422	83.8%	$ 9,578.8	83.6%	218	79.9%	$2,949.6	81.1%
Easton and environs	569	8.8	775.3	6.8	24	8.8	187.4	5.2
Subtotal: Phillipsburg & Easton	5,991	92.6	10,354.1	90.4	242	88.6	3,137.0	86.3
Outside Areas	479	7.4	1,100.7	9.6	31	11.4	498.0	13.7
Total	6,470	100.0	11,454.7	100.0	273	100.0	3,635.0	100.0
	$1 - $1,000				Over $50,000			
Phillipsburg and environs	3,702	83.8	542.3	82.0	1	100.0	81.6	100.0
Easton and environs	414	9.4	67.5	10.2	-	-	-	-
Subtotal: Phillipsburg & Easton	4,116	93.2	609.8	92.2	1	100.0	81.6	100.0
Outside Areas	302	6.8	51.9	7.8	-	-	-	-
Total	4,418	100.0	661.7	100.0	1	100.0	81.6	100.0
	$1,001 - $10,000							
Phillipsburg and environs	1,501	84.4	6,005.2	84.9				
Easton and environs	131	7.4	520.4	7.4				
Subtotal: Phillipsburg & Easton	1,632	91.8	6,525.6	92.2				
Outside Areas	146	8.2	550.8	7.8				
Total	1,778	100.0	7,076.4	100.0				

Note: Detail may not always add to total due to rounding.

Source: Defendant's Answer to Plaintiff's Interrogatory No. 8.

TOTAL LOANS OF PHILLIPSBURG NATIONAL BANK, BY CLASS SIZE, BY LOCATION OF BORROWER, DECEMBER 30, 1967

(Dollar amounts in thousands)

	NUMBER		DOLLAR AMOUNT		NUMBER		DOLLAR AMOUNT	
	No.	Percent	Amount	Percent	No.	Percent	Amount	Percent
	All Class Sizes				$10,001 - $50,000			
Phillipsburg and environs	3,550	63.8%	$9,833.0	67.2%	186	63.3%	$2,994.7	61.7%
Easton and environs	826	14.8	1,545.9	10.6	30	10.2	567.7	11.7
Subtotal: Phillipsburg & Easton	4,376	78.6	11,378.9	77.7	216	73.5	3,562.4	73.4
Outside Areas	1,190	21.4	3,263.7	22.3	78	26.5	1,287.8	26.6
Total	5,566	100.0	14,642.5	100.0	294	100.0	4,850.2	100.0
	$1 - $2,500				Over $50,000			
Phillipsburg and environs	2,645	62.3	1,832.1	59.9	21	84.0	1,465.8	79.6
Easton and environs	688	16.2	459.9	15.0	-	-	-	-
Subtotal: Phillipsburg & Easton	3,333	78.6	2,292.0	75.0	21	84.0	1,465.8	79.6
Outside Areas	910	21.4	764.3	25.0	4	16.0	375.0	20.4
Total	4,243	100.0	3,056.3	100.0	25	100.0	1,840.8	100.0
	$2,501 - $10,000							
Phillipsburg and environs	698	69.5	3,540.3	72.3				
Easton and environs	108	10.8	518.3	10.6				
Subtotal: Phillipsburg & Easton	806	80.3	4,058.6	82.9				
Outside Areas	198	19.7	836.5	17.1				
Total	1,004	100.0	4,895.1	100.0				

Note: Detail may not always add to total due to rounding.

Source: Defendant's Answer to Plaintiff's Interrogatory No. 10.

TOTAL LOANS OF SECOND NATIONAL BANK, BY CLASS SIZE, BY LOCATION OF BORROWER, DECEMBER 30, 1967

(Dollar amounts in thousands)

	NUMBER		DOLLAR AMOUNT	
	No.	Percent	Amount	Percent
All Class Sizes				
Phillipsburg and environs	1,688	75.5%	$7,749.6	72.4%
Easton and environs	260	11.6	982.3	9.2
Subtotal: Phillipsburg & Easton	1,948	87.2	8,731.9	81.6
Outside Areas	287	12.8	1,970.1	18.4
Total	2,235	100.0	10,702.0	100.0
$1 - $2,500				
Phillipsburg and environs	990	76.0	768.2	76.3
Easton and environs	157	12.0	116.5	11.6
Subtotal: Phillipsburg & Easton	1,147	88.0	884.7	87.9
Outside Areas	156	12.0	121.7	12.1
Total	1,303	100.0	1,006.4	100.0
$2,501 - $10,000				
Phillipsburg and environs	492	78.5	2,742.4	78.8
Easton and environs	72	11.5	389.2	11.2
Subtotal: Phillipsburg & Easton	564	90.0	3,131.6	90.0
Outside Areas	63	10.0	346.5	10.0
Total	627	100.0	3,478.1	100.0
$10,001 - $50,000				
Phillipsburg and environs	192	66.7%	$3,131.5	66.6%
Easton and environs	31	10.8	476.7	10.1
Subtotal: Phillipsburg & Easton	223	77.4	3,608.2	76.8
Outside Areas	65	22.6	1,090.5	23.2
Total	288	100.0	4,698.7	100.0
Over $50,000				
Phillipsburg and environs	14	82.4	1,107.4	72.9
Easton and environs	-	-	-	-
Subtotal: Phillipsburg & Easton	14	82.4	1,107.4	72.9
Outside Areas	3	17.6	411.3	27.1
Total	17	100.0	1,518.7	100.0

Note: Detail may not always add to total due to rounding.

Source: Defendant's Answer to Plaintiff's Interrogatory No. 10.

NOTE: Total number of loans (2,235) was taken from (c) part of Defendant's answer to Intern 10. This figure differs from the figure (2,245) given in parts (a) and (b) of this answer. For purposes of this class size spread it is necessary to use the figure given in part (c).

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COMMERCIAL AND INDUSTRIAL LOANS OF PHILLIPSBURG NATIONAL BANK, BY CLASS SIZE, BY LOCATION OF BORROWER, DECEMBER 30, 1967

(Dollar amounts in thousands)

			NUMBER		DOLLAR AMOUNT			NUMBER		DOLLAR AMOUNT	
			No.	Percent	Amount	Percent		No.	Percent	Amount	Percent
Subtotal: Phillipsburg & Easton	56	11.7	100.2	4.2		2		4.5	51.4	6.8	
Outside Areas	245	79.5	2,064.9	86.9		43		97.7	745.8	98.2	
Total	63	20.5	310.1	13.1		1		2.3	13.5	1.8	
	308	100.0	2,375.0	100.0		44		100.0	759.3	100.0	
			$1 - $2,500					Over $50,000			
Phillipsburg and environs	103	57.2	94.6	62.4		14		87.5	985.3	82.4	
Easton and environs	25	13.9	19.3	12.7		-		-	-	-	
Subtotal: Phillipsburg & Easton	128	71.1	113.9	75.1		14		87.5	985.3	82.4	
Outside Areas	52	28.9	37.7	24.9		2		12.5	210.0	17.6	
Total	180	100.0	151.6	100.0		16		100.0	1,195.3	100.0	
			$2,501 - $10,000								
Phillipsburg and environs	51	75.0	190.4	70.8							
Easton and environs	9	13.2	29.5	11.0							
Subtotal: Phillipsburg & Easton	60	88.2	219.9	81.8							
Outside Areas	8	11.8	48.9	18.2							
Total	68	100.0	268.8	100.0							

Note: Detail may not always add to total due to rounding.

Source: Defendant's Answer to Plaintiff's Interrogatory No. 10.

COMMERCIAL AND INDUSTRIAL LOANS OF SECOND NATIONAL BANK, BY CLASS SIZE, BY LOCATION OF BORROWER, DECEMBER 30, 1967

(Dollar amounts in thousands)

	NUMBER		DOLLAR AMOUNT		NUMBER		DOLLAR AMOUNT	
	No.	Percent	Amount	Percent	No.	Percent	Amount	Percent
	All Class Sizes				$10,001 - $50,000			
Phillipsburg and environs	61	79.2%	$1,159.7	71.0%	11	84.6%	$236.3	77.5%
Easton and environs	9	11.7	81.5	5.0	1	7.7	44.1	14.4
Subtotal: Phillipsburg & Easton	70	90.9	1,241.2	76.0	12	92.3	280.4	91.9
Outside Areas	7	9.1	392.2	24.0	1	7.7	24.7	8.1
Total	77	100.0	1,633.4	100.0	13	100.0	305.1	100.0
	$1 - $2,500				Over $50,000			
Phillipsburg and environs	23	85.2	27.8	87.7	9	75.0%	806.5	69.1%
Easton and environs	2	7.4	.8	2.5	-	-	-	-
Subtotal: Phillipsburg & Easton	25	92.6	28.6	90.2	9	75.0	806.5	69.1
Outside Areas	2	7.4	3.1	9.8	3	25.0	360.0	30.9
Total	27	100.0	31.7	100.0	12	100.0	1,166.5	100.0
	$2,501 - $10,000							
Phillipsburg and environs	18	72.0	89.2	68.6				
Easton and environs	6	24.0	36.6	28.1				
Subtotal: Phillipsburg & Easton	24	96.0	125.8	96.7				
Outside Areas	1	4.0	4.3	3.3				
Total	25	100.0	130.1	100.0				

Note: Detail may not always add to total due to rounding.

Source: Defendant's Answer to Plaintiff's Interrogatory No. 10.

GX 24

REAL ESTATE LOANS OF PHILLIPSBURG NATIONAL BANK, BY CLASS SIZE, BY LOCATION OF BORROWER, DECEMBER 30, 1967

(Dollar amounts in thousands)

	NUMBER		DOLLAR AMOUNT		NUMBER		DOLLAR AMOUNT	
	No.	Percent	Amount	Percent	No.	Percent	Amount	Percent
	All Class Sizes				$10,001 - $50,000			
Phillipsburg and environs	872	78.5%	$5,616.3	71.2%	139	60.7%	$2,205.4	58.9%
Easton and environs	92	8.3	860.7	10.9	28	12.2	516.3	13.8
Subtotal: Phillipsburg & Easton	964	86.8	6,477.0	82.1	167	72.9	2,721.7	72.7
Outside Areas	147	13.2	1,416.0	17.9	62	27.1	1,020.6	27.3
Total	1,111	100.0	7,893.0	100.0	229	100.0	3,742.3	100.0
	$1 - $2,500				Over $50,000			
Phillipsburg and environs	209	86.7	285.6	86.6	4	100.0	221.7	100.0
Easton and environs	12	5.0	20.0	6.1	-	-	-	-
Subtotal: Phillipsburg & Easton	221	91.7	305.6	92.7	4	100.0	221.7	100.0
Outside Areas	20	8.3	24.2	7.3	-	-	-	-
Total	241	100.0	329.8	100.0	4	100.0	221.7	100.0
	$2,501 - $10,000							
Phillipsburg and environs	520	81.6	2,903.7	80.7				
Easton and environs	52	8.2	324.3	9.0				
Subtotal: Phillipsburg & Easton	572	89.8	3,228.0	89.7				
Outside Areas	65	10.2	371.3	10.3				
Total	637	100.0	3,599.3	100.0				

Note: Detail may not always add to total due to rounding.

Source: Defendant's Answer to Plaintiff's Interrogatory No. 10.

REAL ESTATE LOANS OF SECOND NATIONAL BANK, BY CLASS SIZE, BY LOCATION OF BORROWER, DECEMBER 30, 1967

(Dollar amounts in thousands)

	NUMBER		DOLLAR AMOUNT		NUMBER		DOLLAR AMOUNT	
	No.	Percent	Amount	Percent	No.	Percent	Amount	Percent
	All Class Sizes				$10,001 - $50,000			
Phillipsburg and environs	693	77.5%	$5,580.7	72.6%	178	62.2%	$2,810.8	65.9%
Easton and environs	92	10.3	756.7	9.9	30	11.2	432.5	10.1
Subtotal: Phillipsburg & Easton	785	87.8	6,337.4	82.5	208	77.3	3,243.3	76.0
Outside Areas	109	12.2	1,342.5	17.5	61	22.7	1,024.4	24.0
Total	894	100.0	7,679.9	100.0	269	100.0	4,267.7	100.0
	$1 - $2,500				Over $50,000			
Phillipsburg and environs	99	88.4	142.3	88.3	4	80.0	233.5	82.0
Easton and environs	7	6.2	12.5	7.8	-	-	-	-
Subtotal: Phillipsburg & Easton	106	94.6	154.8	96.0	4	80.0	233.5	82.0
Outside Areas	6	5.4	6.4	4.0	1	20.0	51.3	18.0
Total	112	100.0	161.2	100.0	5	100.0	284.8	100.0
	$2,501 - $10,000							
Phillipsburg and environs	412	81.1	2,394.1	80.7				
Easton and environs	55	10.8	311.7	10.5				
Subtotal: Phillipsburg & Easton	467	91.9	2,705.8	91.2				
Outside Areas	41	8.1	260.3	8.8				
Total	508	100.0	2,966.1	100.0				

Note: Detail may not always add to total due to rounding.

Source: Defendant's Answer to Plaintiff's Interrogatory No. 10.

GX 25

SHARES OF TOTAL ASSETS OF COMMERCIAL BANKS IN PHILLIPSBURG AND PHILLIPSBURG-EASTON
As of Year-End, 1966 and 1967

(Dollar amounts in thousands)

	December 31, 1966			December 30, 1967		
	Dollar Amount	% of P'burg	% of P-E	Dollar Amount	% of P'burg	% of P-E
PHILLIPSBURG NATIONAL BANK	$22,248	43.9%	11.2%	$ 23,861	44.0%	11.2%
SECOND NATIONAL BANK	16,513	32.6	8.3	17,255	31.8	8.1
RESULTING BANK	38,761	76.5	19.5	41,116	75.8	19.3
Phillipsburg Trust Co.	11,920	23.5	6.0	13,161	24.2	6.2
Subtotal: Phillipsburg	50,681	100.0	25.5	54,277	100.0	25.5
Easton National Bank	71,208	-	35.8	75,591	-	35.5
Northampton National Bank	23,370	-	11.7	23,225	-	10.9
Lafayette Trust Bank	24,321	-	12.2	27,705	-	13.0
Nazareth National Bank	29,434	-	14.8	32,014	-	15.0
TOTAL	199,014	-	100.0	212,812	-	100.0

Note: Detail may not always add to total due to rounding.

Source: Reports of Condition of Individual Banks, 1966 and 1967.

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SHARES OF TOTAL DEPOSITS OF COMMERCIAL BANKS IN PHILLIPSBURG AND PHILLIPSBURG-EASTON
As of Year-End, 1966 and 1967

(Dollar amounts in thousands)

	December 31, 1966			December 30, 1967		
	Dollar Amount	% of P'burg	% of P-E	Dollar Amount	% of P'burg	% of P-E
PHILLIPSBURG NATIONAL BANK	$ 20,791	43.9%	11.5%	$ 22,358	44.3%	11.8%
SECOND NATIONAL BANK	15,243	32.2	8.5	16,005	31.7	8.4
RESULTING BANK	36,034	76.1	20.0	38,363	76.1	20.2
Phillipsburg Trust Co.	11,345	23.9	6.3	12,078	23.9	6.4
Subtotal: Phillipsburg	47,379	100.0	26.3	50,441	100.0	26.5
Easton National Bank	65,504	-	36.3	67,722	-	35.6
Northampton National Bank	19,393	-	10.8	18,961	-	10.0
Lafayette Trust Bank	21,664	-	12.0	24,309	-	12.8
Nazareth National Bank	26,273	-	14.6	28,706	-	15.1
TOTAL	180,213	-	100.0	190,139	-	100.0

Note: Detail may not always add to total due to rounding.

Source: Reports of Condition of Individual Banks, 1966 and 1967.

SHARES OF TOTAL DEPOSITS OF COMMERCIAL BANKS IN PHILLIPSBURG AND PHILLIPSBURG-EASTON
As of Year-End, 1966 and 1967

(Dollar amounts in thousands)

	December 31, 1966			December 30, 1967		
	Dollar Amount	% of P'burg	% of P-E	Dollar Amount	% of P'burg	% of P-E
PHILLIPSBURG NATIONAL BANK	$ 20,791	43.9%	13.5%	$ 22,358	44.3%	13.7%
SECOND NATIONAL BANK	15,243	32.2	9.9	16,005	31.7	9.8
RESULTING BANK	36,034	76.1	23.5	38,363	76.1	23.4
Phillipsburg Trust Co.	11,345	23.9	7.4	12,078	23.9	7.4
Subtotal: Phillipsburg	47,379	100.0	30.9	50,441	100.0	30.8
Easton National Bank	63,504	-	41.4	67,722	-	41.4
Northampton National Bank	19,393	-	12.6	18,961	-	11.6
Lafayette Trust Bank	21,664	-	14.1	24,309	-	14.8
Nazareth NB (Forks Branch only)	1,538	-	1.0	2,281	-	1.4
TOTAL	153,478	-	100.0	163,714	-	100.0

Note: Detail may not always add to total due to rounding.

Source: Reports of Condition of Individual Banks, 1966 and 1967, except for branch statistics of Nazareth National which were provided in a letter from that bank dated May 1, 1968.

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SHARES OF DEMAND DEPOSITS OF COMMERCIAL BANKS IN PHILLIPSBURG AND PHILLIPSBURG-EASTON
As of Year-End, 1966 and 1967

(Dollar amounts in thousands)

	December 31, 1966			December 30, 1967		
	Dollar Amount	% of P'burg	% of P-E	Dollar Amount	% of P'burg	% of P-E
PHILLIPSBURG NATIONAL BANK	$ 6,462	47.0%	10.2%	$ 6,542	45.0%	10.1%
SECOND NATIONAL BANK	4,337	31.5	6.8	4,550	31.3	7.0
RESULTING BANK	10,799	78.5	17.0	11,092	76.4	17.1
Phillipsburg Trust Co.	2,949	21.5	4.6	3,435	26.3	5.3
Subtotal: Phillipsburg	13,748	100.0	21.7	14,527	100.0	22.4
Easton National Bank	25,883	-	40.8	25,439	-	39.2
Northampton National Bank	6,281	-	9.9	6,358	-	9.8
Lafayette Trust Bank	9,663	-	15.2	10,846	-	16.7
Nazareth National Bank	7,887	-	12.4	7,801	-	12.0
TOTAL	63,462	-	100.0	64,971	-	100.0

Note: Detail may not always add to total due to rounding.

Source: Reports of Condition of Individual Banks, 1966 and 1967.

SHARES OF DEMAND DEPOSITS OF COMMERCIAL BANKS IN PHILLIPSBURG AND PHILLIPSBURG-EASTON
As of Year-End, 1966 and 1967

(Dollar amounts in thousands)

	December 31, 1966			December 30, 1967		
	Dollar Amount	% of P'burg	% of P-E	Dollar Amount	% of P'burg	% of P-E
PHILLIPSBURG NATIONAL BANK	$ 6,462	47.0%	11.5%	$ 6,542	45.0%	11.3%
SECOND NATIONAL BANK	4,337	31.5	7.7	4,550	31.3	7.9
RESULTING BANK	10,799	78.4	19.3	11,092	76.4	19.2
Phillipsburg Trust Co.	2,949	21.6	5.3	3,435	23.6	6.0
Subtotal: Phillipsburg	13,748	100.0	24.6	14,527	100.0	25.2
Easton National Bank	25,883	-	46.2	25,439	-	44.1
Northampton National Bank	6,281	-	11.2	6,358	-	11.0
Lafayette Trust Bank	9,663	-	17.3	10,846	-	18.8
Nazareth NB (Forks Branch only)	425	-	0.8	526	-	0.9
TOTAL	56,000	-	100.0	57,696	-	100.0

Note: Detail may not always add to total due to rounding.

Source: Reports of Condition of Individual Banks, 1966 and 1967, except for branch statistics of Nazareth National which were provided in a letter from that bank dated May 1, 1968.

GX 28

SHARES OF IPC DEMAND DEPOSITS OF COMMERCIAL BANKS IN PHILLIPSBURG AND PHILLIPSBURG-EASTON
As of Year-End, 1966 and 1967

(Dollar amounts in thousands)

	December 31, 1966			December 30, 1967		
	Dollar Amount	% of P'burg	% of P-E	Dollar Amount	% of P'burg	% of P-E
PHILLIPSBURG NATIONAL BANK	$ 5,571	47.7%	9.7%	$ 5,551	45.6	9.6%
SECOND NATIONAL BANK	3,569	30.6	6.2	3,648	30.0	6.3
RESULTING BANK	9,140	78.3	16.0	9,199	75.5	15.8
Phillipsburg Trust Co.	2,529	21.7	4.4	2,979	24.5	5.1
Subtotal: Phillipsburg	11,669	100.0	20.4	12,178	100.0	21.0
Easton National Bank	24,114	-	42.2	23,424	-	40.4
Northampton National Bank	6,150	-	10.8	6,265	-	10.8
Lafayette Trust Bank	8,043	-	14.1	9,452	-	16.3
Nazareth National Bank	7,214	-	12.6	6,729	-	11.6
TOTAL	57,190	-	100.0	58,048	-	100.0

Note: Detail may not always add to total due to rounding.

Source: Reports of Condition of Individual Banks, 1966 and 1967.

GX 29

SHARES OF TIME AND SAVINGS DEPOSITS OF COMMERCIAL BANKS IN PHILLIPSBURG AND PHILLIPSBURG-EASTON
As of Year-End, 1966 and 1967

(Dollar amounts in thousands)

	December 31, 1966			December 30, 1967		
	Dollar Amount	% of P'burg	% of P-E	Dollar Amount	% of P'burg	% of P-E
PHILLIPSBURG NATIONAL BANK	$ 14,328	42.6%	12.5%	$ 15,816	44.0%	12.6%
SECOND NATIONAL BANK	10,906	32.4	9.5	11,455	31.9	9.2
RESULTING BANK	25,234	75.0	22.0	27,271	75.9	21.8
Phillipsburg Trust Co.	8,396	25.0	7.3	8,643	24.1	6.9
Subtotal: Phillipsburg	33,630	100.0	29.3	35,914	100.0	28.7
Easton National Bank	37,621	-	32.8	42,283	-	33.8
Northampton National Bank	13,112	-	11.4	12,603	-	10.1
Lafayette Trust Bank	12,001	-	10.5	13,462	-	10.8
Nazareth National Bank	18,386	-	16.0	20,906	-	16.7
TOTAL	114,750	-	100.0	125,168	-	100.0

Note: Detail may not always add to total due to rounding.

Source: Reports of Condition of Individual Banks, 1966 and 1967.

SHARES OF TIME AND SAVINGS DEPOSITS OF COMMERCIAL BANKS IN PHILLIPSBURG AND PHILLIPSBURG-EASTON
As of Year-End, 1966 and 1967

(Dollar amounts in thousands)

	December 31, 1966			December 30, 1967		
	Dollar Amount	% of P'burg	% of P-E	Dollar Amount	% of P'burg	% of P-E
PHILLIPSBURG NATIONAL BANK	$14,328	42.6	14.7	$ 15,816	44.0	14.9
SECOND NATIONAL BANK	10,906	32.4	11.2	11,455	31.9	10.8
RESULTING BANK	25,234	75.0	25.9	27,271	75.9	25.7
Phillipsburg Trust Co.	8,396	25.0	8.6	8,643	24.1	8.2
Subtotal: Phillipsburg	33,630	100.0	34.5	35,914	100.0	33.9
Easton National Bank	37,621	-	38.6	42,283	-	39.9
Northampton National Bank	13,112	-	13.5	12,603	-	11.9
Lafayette Trust Bank	12,001	-	12.3	13,462	-	12.7
Nazareth NB (Forks Branch only)	1,113	-	1.1	1,755	-	1.7
TOTAL	97,477	-	100.0	106,017	-	100.0

Note: Detail may not always add to total due to rounding.

Source: Reports of Condition of Individual Banks, 1966 and 1967, except for branch statistics of Nazareth National which were provided in a letter from that bank dated May 1, 1968.

SHARES OF TOTAL LOANS AND DISCOUNTS OF COMMERCIAL BANKS IN PHILLIPSBURG AND PHILLIPSBURG-EASTON
As of Year-End, 1966 and 1967

(Dollar amounts in thousands)

	December 31, 1966			December 30, 1967		
	Dollar Amount	% of P'burg	% of P-E	Dollar Amount	% of P'burg	% of P-E
PHILLIPSBURG NATIONAL BANK	$13,449	49.8%	15.9%	$14,486	48.9%	15.8%
SECOND NATIONAL BANK	9,428	34.9	11.2	10,452	35.2	11.4
RESULTING BANK	22,877	84.7	27.1	24,938	84.1	27.3
Phillipsburg Trust Co.	4,120	15.3	4.9	4,715	15.9	5.2
Subtotal: Phillipsburg	26,997	100.0	31.9	29,653	100.0	32.4
Easton National Bank	30,507	-	36.1	32,640	-	35.7
Northampton National Bank	6,268	-	7.4	6,504	-	7.1
Lafayette Trust Bank	10,416	-	12.3	11,830	-	12.9
Nazareth National Bank	10,335	-	12.2	10,883	-	11.9
TOTAL	84,523	-	100.0	91,510	-	100.0

Note: Detail may not always add to total due to rounding.

Source: Reports of Condition of Individual Banks, 1966 and 1967.

GX 31

SHARES OF COMMERCIAL AND INDUSTRIAL LOANS OF COMMERCIAL BANKS IN PHILLIPSBURG AND PHILLIPSBURG-EASTON
As of Year-End, 1966 and 1967

(Dollar amounts in thousands)

	December 31, 1966			December 30, 1967		
	Dollar Amount	% of P'burg	% of P-E	Dollar Amount	% of P'burg	% of P-E
PHILLIPSBURG NATIONAL BANK	$ 1,427	69.3%	15.7%	$ 2,375	57.1%	20.7%
SECOND NATIONAL BANK	510	24.8	5.6	1,320	31.8	11.5
RESULTING BANK	1,937	94.1	21.3	3,695	88.9	32.2
Phillipsburg Trust Co.	121	5.9	1.3	462	11.1	4.0
Subtotal: Phillipsburg	2,058	100.0	22.6	4,157	100.0	36.3
Easton National Bank	3,219	-	35.4	3,519	-	30.7
Northampton National Bank	1,100	-	12.1	1,072	-	9.4
Lafayette Trust Bank	1,279	-	14.1	1,315	-	11.5
Nazareth National Bank	1,445	-	15.9	1,402	-	12.2
TOTAL	9,101	-	100.0	11,465	-	100.0

Note: Detail may not always add to total due to rounding.

Source: Reports of Condition of Individual Banks, 1966 and 1967.

GX 32

SHARES OF REAL ESTATE LOANS OF COMMERCIAL BANKS IN PHILLIPSBURG AND PHILLIPSBURG-EASTON
As of Year-End, 1966 and 1967

(Dollar amounts in thousands)

	December 31, 1966			December 30, 1967		
	Dollar Amount	% of P'burg	% of P-E	Dollar Amount	% of P'burg	% of P-E
PHILLIPSBURG NATIONAL BANK	$ 7,201	40.9%	14.3%	$ 7,893	41.7%	14.3%
SECOND NATIONAL BANK	7,320	41.6	14.5	7,680	40.5	14.0
RESULTING BANK	14,521	82.5	28.8	15,573	82.2	28.3
Phillipsburg Trust Co.	3,078	17.5	6.1	3,374	17.8	6.1
Subtotal: Phillipsburg	17,599	100.0	34.9	18,947	100.0	34.4
Easton National Bank	15,069	-	29.9	16,997	-	30.9
Northampton National Bank	4,446	-	8.8	4,600	-	8.4
Lafayette Trust Bank	6,656	-	13.2	7,481	-	13.6
Nazareth National Bank	6,619	-	13.1	6,994	-	12.7
TOTAL	50,389	-	100.0	55,019	-	100.0

Note: Detail may not always add to total due to rounding.

Source: Reports of Condition of Individual Banks, 1966 and 1967.

GX 33

SHARES OF INSTALLMENT LOANS OF COMMERCIAL BANKS IN PHILLIPSBURG AND PHILLIPSBURG-EASTON
As of Year-End, 1966 and 1967

(Dollar amounts in thousands)

	December 31, 1966			December 30, 1967		
	Dollar Amount	% of P'burg	% of P-E	Dollar Amount	% of P'burg	% of P-E
PHILLIPSBURG NATIONAL BANK	$ 2,881	72.0%	21.9%	$ 2,822	73.2%	21.0%
SECOND NATIONAL BANK	918	23.0	7.0	877	22.7	6.5
RESULTING BANK	3,799	95.0	28.8	3,699	95.9	27.6
Phillipsburg Trust Co.	200	5.0	1.5	157	4.1	1.2
Subtotal: Phillipsburg	3,999	100.0	30.3	3,856	100.0	28.8
Easton National Bank	6,983	-	53.0	7,245	-	54.0
Northampton National Bank	None	-	-	None	-	-
Lafayette Trust Bank	1,511	-	11.5	1,666	-	12.4
Nazareth National Bank	684	-	5.2	644	-	4.8
TOTAL	13,177	-	100.0	13,411	-	100.0

Note: Detail may not always add to total due to rounding.

Source: Reports of Condition of Individual Banks, 1966 and 1967.

SHARES OF SINGLE PAYMENT LOANS OF COMMERCIAL BANKS IN PHILLIPSBURG AND PHILLIPSBURG-EASTON
As of Year-End, 1966 and 1967

(Dollar amounts in thousands)

	December 31, 1966			December 30, 1967		
	Dollar Amount	% of P'burg	% of P-E	Dollar Amount	% of P'burg	% of P-E
PHILLIPSBURG NATIONAL BANK	$1,441	47.2%	16.1%	$1,209	44.2%	13.2%
SECOND NATIONAL BANK	719	23.6	8.0	633	23.2	6.9
RESULTING BANK	2,160	70.8	24.1	1,842	67.4	20.2
Phillipsburg Trust Co.	891	29.2	9.9	892	32.6	9.8
Subtotal: Phillipsburg	3,051	100.0	34.0	2,734	100.0	29.9
Easton National Bank	3,672	-	40.9	3,521	-	38.6
Northampton National Bank	673	-	7.5	764	-	8.4
Lafayette Trust Bank	850	-	9.5	1,182	-	12.9
Nazareth National Bank	723	-	8.1	298	-	10.2
TOTAL	8,969	-	100.0	9,129	-	100.0

Note: Detail may not always add to total due to rounding.

Source: Reports of Condition of Individual Banks, 1966 and 1967.

GX 35

GROWTH OF DEFENDANT BANKS IN ASSETS, DEPOSITS AND LOANS, 1957-1967

(Dollar amounts in thousands)

	Dollar Amount			Percent Increase or Decrease		
	Dec. 1957	Dec. 1962	Dec. 1967	1957-1962	1962-1967	1957-1967
TOTAL ASSETS						
Phillipsburg Natl	$10,602	$14,636	$23,861	38.0%	63.0%	125.1%
Second Natl	9,451	12,369	17,255	30.9	39.5	82.6
TOTAL DEPOSITS						
Phillipsburg Natl	9,608	13,489	22,358	40.4	65.7	132.7
Second National	8,554	11,306	16,005	32.2	41.6	87.1
LOANS AND DISCOUNTS						
Phillipsburg Natl	5,018	7,342	14,486	46.3	97.3	188.7
Second Natl	3,359	5,429	10,452	61.6	92.5	211.2
TOTAL DEMAND DEPOSITS						
Phillipsburg Natl	3,517	4,289	6,542	22.0	52.5	86.0
Second Natl	3,054	3,351	4,550	9.7	35.8	49.0

GROWTH OF DEFENDANT BANKS IN ASSETS, DEPOSITS AND LOANS, 1957-1967

	Dollar Amount			Percent Increase or Decrease		
	Dec. 1957	Dec. 1962	Dec. 1967	1957-1962	1962-1967	1957-1967
TOTAL IPC DEMAND DEPOSITS						
Phillipsburg Natl	$ 2,788	$ 3,580	$ 5,551	28.4	55.1	99.1
Second Natl	2,160	2,515	3,648	16.4	45.0	68.9
TOTAL TIME & SAV. DEP.						
Phillipsburg Natl	6,091	9,200	15,816	51.0	71.9	159.7
Second Natl	5,499	7,955	11,455	44.7	44.0	108.3

Source: Reports of Condition of Defendant Banks, 1957, 1962 and 1967.

GX 36

GROWTH OF COMMERCIAL BANKS IN PHILLIPSBURG-EASTON, IN ASSETS, DEPOSITS AND LOANS, 1962-1967

(Dollar amounts in thousands)

	Dollar Amount		Percent Increase or Decrease
	Dec. 1962	Dec. 1967	
TOTAL ASSETS			
PHILLIPSBURG NATIONAL	$14,636	$23,861	63.0%
SECOND NATIONAL	12,369	17,255	39.5
Phillipsburg Trust	9,020	13,161	45.9
Easton National	62,367	75,591	21.2
Northampton National	23,661	23,225	-1.8
Lafayette Trust	19,404	27,705	42.8
Nazareth National	23,510	32,014	36.2
Total	164,967	~~$18,$17~~	39.8 (av)
TOTAL DEPOSITS			
PHILLIPSBURG NATIONAL	$13,489	$22,358	65.7%
SECOND NATIONAL	11,306	16,005	41.6
Phillipsburg Trust	8,499	12,078	42.1
Easton National	55,754	67,722	21.5
Northampton National	19,969	18,961	-5.0
Lafayette Trust	17,294	24,309	40.6
Nazareth National	20,985	28,706	36.8
Total	147,396	190,139	39.1 (av)

[1462]

	Dollar Amount Dec. 1962	Dec. 1967	Percent Increase or Decrease
TOTAL LOANS & DISCOUNTS			
PHILLIPSBURG NATIONAL	$ 7,342	$14,486	97.3%
SECOND NATIONAL	5,429	10,452	92.5
Phillipsburg Trust	3,682	4,715	28.1
Easton National	25,422	32,640	28.4
Northampton National	4,797	6,504	35.6
Lafayette Trust	8,244	11,830	43.5
Nazareth National	8,799	10,883	23.7
Total	63,715	91,510	43.6 (av)
TOTAL DEMAND DEPOSITS			
PHILLIPSBURG NATIONAL	$4,289	$6,542	52.5%
SECOND NATIONAL	3,351	4,550	35.8
Phillipsburg Trust	2,265	3,435	51.7
Easton National	22,339	25,439	13.9
Northampton National	6,818	6,358	-6.7
Lafayette Trust	7,487	10,846	44.9
Nazareth National	8,264	7,801	-5.6
Total	54,813	64,971	18.5 (av)

	Dollar Amount Dec. 1962	Dec. 1967	Percent Increase or Decrease
TOTAL IPC DEMAND DEPOSITS			
PHILLIPSBURG NATIONAL	$3,580	$5,551	55.1%
SECOND NATIONAL	2,515	3,648	45.0
Phillipsburg Trust	1,833	2,979	62.5
Easton National	19,971	23,424	17.3
Northampton National	6,720	6,265	-6.8
Lafayette Trust	5,793	9,452	63.2
Nazareth National	7,449	6,729	-9.7
Total	47,861	58,048	21.3 (4
TOTAL TIME & SAVINGS DEPOSITS			
PHILLIPSBURG NATIONAL	$9,200	$15,816	71.9%
SECOND NATIONAL	7,955	11,455	44.0
Phillipsburg Trust	6,233	8,643	38.7
Easton National	33,415	42,283	26.5
Northampton National	13,151	12,603	-4.2
Lafayette Trust	9,806	13,462	37.3
Nazareth National	12,721	20,906	64.3
Total	92,481	125,168	35.3 (4

Source: Reports of Condition of Individual Banks, 1962 and 1967.

CX 37

GROWTH OF COMMERCIAL BANKS IN PHILLIPSBURG-EASTON IN VARIOUS CATEGORIES OF LOANS, 1962-1967

(Dollar amounts in thousands)

	Dollar Amount		Percent Increase or Decrease
	Dec. 1962	Dec. 1967	
REAL ESTATE LOANS			
PHILLIPSBURG NATIONAL	$ 5,120	$ 7,893	54.2%
SECOND NATIONAL	4,185	7,680	83.5
Phillipsburg Trust	2,494	3,374	35.3
Easton National	12,173	16,997	39.6
Northampton National	3,734	4,600	25.9
Lafayette Trust	4,470	7,481	67.4
Nazareth National	5,809	6,994	20.4
COMMERCIAL & INDUSTRIAL LOANS			
PHILLIPSBURG NATIONAL	594	2,375	299.8
SECOND NATIONAL	584	1,320	126.0
Phillipsburg Trust	93	462	396.8
Easton National	3,188	3,519	10.4
Northampton National	439	1,072	144.2
Lafayette Trust	1,246	1,315	5.5
Nazareth National	1,306	1,402	7.4
INSTALLMENT LOANS			
PHILLIPSBURG NATIONAL	717	2,822	293.6
SECOND NATIONAL	596	877	47.1
Phillipsburg Trust	497	157	-68.4
Easton National	4,309	7,245	68.1
Northampton National	-	-	-
Lafayette Trust	1,088	1,666	53.1
Nazareth National	609	644	5.7

	Dollar Amount		Percent Increase or Decrease
	Dec. 1962	Dec. 1967	
SINGLE PAYMENT LOANS			
PHILLIPSBURG NATIONAL	$ 799	$ 1,209	51.3%
SECOND NATIONAL	1	633	63200.0
Phillipsburg Trust	462	892	93.1
Easton National	902	3,521	290.4
Northampton National	533	764	43.3
Lafayette Trust	671	1,182	76.2
Nazareth National	450	928	106.2
TOTAL LOANS AND DISCOUNTS			
PHILLIPSBURG NATIONAL	7,342	14,486	97.3
SECOND NATIONAL	5,429	10,452	92.5
Phillipsburg Trust	3,682	4,715	28.1
Easton National	25,422	32,640	28.4
Northampton National	4,797	6,504	35.6
Lafayette Trust	8,244	11,830	43.5
Nazareth National	8,799	10,883	23.7

Source: Reports of Condition of Individual Banks, 1962 and 1967.

DEPOSIT RATIOS OF ALL COMMERCIAL BANKS IN PHILLIPSBURG-EASTON, DECEMBER 31, 1966

(Dollar amounts in thousands)

Banks Banks Group	Total Deposits	Demand Deposits Amount	 %	Time & Savings Deposits Amount	 %
PHILLIPSBURG NATIONAL BANK	$ 20,791	$ 6,462	31.1%	$ 14,329	68.9%
SECOND NATIONAL BANK	15,243	4,337	28.5	10,906	71.5
Phillipsburg Trust Co.	11,345	2,949	26.0	8,396	74.0
Easton National Bank	63,504	25,883	40.8	37,621	59.2
Northampton National Bank	19,393	6,281	32.4	13,112	67.6
Lafayette Trust Bank	21,664	9,663	44.6	12,001	55.4
Nazareth National Bank	26,273	7,887	30.0	18,386	70.0
All Warren County Banks	133,573	39,573	29.6	94,000	70.4
All Banks in New Jersey	10,626,280	5,157,440	48.5	5,468,840	51.5
All Banks in Third Federal Reserve District with Deposits of $10-$20 million	NA	NA	39.7	NA	60.3

NA - Not available.

Source: Reports of Condition for individual banks. Bank Groups from FDIC Composite Reports published in March 1968, based on Reports of Condition of insured banks, and Operating Ratios of Member Banks, 1966, Federal Reserve Bank of Philadelphia, (Circular letter 2229)

GX 39

DEPOSIT RATIOS OF ALL COMMERCIAL BANKS IN PHILLIPSBURG-EASTON, DECEMBER 30, 1967

(Dollar amounts in thousands)

Banks Banks Group	Total Deposits	Demand Deposits Amount	Demand Deposits %	Time & Savings Deposits Amount	Time & Savings Deposits %
PHILLIPSBURG NATIONAL BANK	$ 22,358	$ 6,542	29.3%	$ 15,816	70.7%
SECOND NATIONAL BANK	16,005	4,550	28.4	11,455	71.6
Phillipsburg Trust Co.	12,078	3,435	28.4	8,643	71.6
Easton National Bank	67,722	25,439	37.6	42,283	62.4
Northampton National Bank	18,961	6,358	33.5	12,603	66.5
Lafayette Trust Bank	24,309	10,846	44.6	13,462	55.4
Nazareth National Bank	28,706	7,801	27.2	20,906	72.8
All Warren County Banks	143,553	42,941	29.9	100,612	70.1
All Banks in New Jersey	11,856,228	5,642,111	47.6	6,214,117	52.4
All Banks in N. J. with Deposits of $10-25 million	NA	NA	40.4	NA	59.5
All Banks in Third Federal Reserve District with Deposits of $10-20 million	NA	NA	38.6	NA	61.4

NA - Not available.

Source: Reports of Condition for individual banks. Bank Group from FDIC Composite Reports published in March 1968, based on Reports of Condition of insured banks, and Operating Ratios of Member Banks, 1967, Federal Reserve Bank of Philadelphia, (Circular letter 2329)

GX 40

DEMAND DEPOSITS OF BANKS IN THE LEHIGH VALLEY AREA AS PERCENTAGES OF TOTAL DEPOSITS OF THOSE BANKS, DECEMBER 30, 1967

(Dollar amounts in thousands)

	Name of Bank	Total Deposits	Demand Deposits	
			Amount	% of Total Deposits
	Girard Trust (entire bank)	$1,289,941	$759,320	58.8%
1	Lafayette Trust Bank	$ 24,309	$ 10,846	44.6%
2	First Natl Bank of Allentown	179,221	74,120	41.4
3	Easton National	67,722	25,439	37.6
4	Hackettstown National	10,174	3,643	35.8
5	Merchants Natl Bank of Allentown	123,741	42,790	34.6
6	Washington Trust Co.	14,506	4,994	34.4
7	First Natl Bank of Washington	18,236	6,232	34.2
8	Hunterdon County Trust Co.	9,558	3,271	34.2
9	Flemington National	25,218	8,490	33.7
10	Northampton National	18,961	6,358	33.5
11	First National, Bethlehem	102,898	33,521	32.6
12	First National Bank of Bangor	15,603	4,852	31.1
13	Citizens Natl, Bloomsbury	4,788	1,481	30.9
14	Pen Argyl National	9,637	2,876	29.8
15	Peoples Natl Bank of Hackettstown	17,298	5,118	29.6
16	PHILLIPSBURG NATIONAL	22,358	6,542	29.3
17	First Clinton National	19,396	5,685	29.3
18	First National, Blairstown	5,891	1,711	29.0
19	First National, Hope	10,981	3,105	28.3
20	Nazareth National B & T	28,706	7,801	27.2
21	First Natl Bank of Coopersburg	7,308	1,978	27.1
22	Hunterdon County National	53,458	14,322	26.8
23	Citizens Bank of Wind Gap	5,208	1,395	26.8
24	Portland National	5,275	1,395	26.4
25	First National, Milford	18,785	4,666	24.8
26	Phillipsburg Trust Co.	12,078	2,979	24.7

DEMAND DEPOSITS OF BANKS IN THE LEHIGH VALLEY AREA AS PERCENTAGES OF TOTAL DEPOSITS OF THOSE BANKS, DECEMBER 30, 1967

	Name of Bank	Total Deposits	Demand Deposits	
			Amount	% of Total Deposits
27	Saucon Valley Trust Co.	$ 11,559	$ 2,816	24.4
28	Second Natl Bank of Nazareth	13,314	3,137	23.6
29	SECOND NATIONAL	16,005	3,648	22.8
30	Slatington National B & T	7,281	1,642	22.6
31	First Natl Bank of Belvidere	16,029	3,611	22.5
32	Citizens National, Slatington	5,938	1,316	22.2
33	First National Bank of Bath	11,384	2,489	21.9
34	Cement National, Northampton	34,926	7,469	21.4
35	Walnutport State Bank	4,215	896	21.3
36	New Tripoli National Bank	7,475	1,516	20.3
37	Merchants National, Bangor	15,205	2,808	18.5
38	First Natl Bank of Pen Argyl	4,344	716	16.5
39	Neffs National Bank	7,515	1,088	14.5
	Girard Trust (Riegelsville Branch)	13,049	1,800	13.8
	Lehigh Valley Trust Co., Allentown	NA	NA	NA
	Union B & T Co. of Eastern Penna.	NA	NA	NA

NA - Not available.

Source: Defendants' composite statistical chart for banks in the Lehigh Valley trading area. Girard Trust (Riegelsville Branch) from Deposition of John W. Rhimer, Government Exhibit No. 52.

GX 42

LOAN RATIOS OF ALL COMMERCIAL BANKS IN PHILLIPSBURG-EASTON, DECEMBER 31, 1966

(Dollar amounts in thousands)

Banks Bank Group	Total Loans (Gross)	Real Estate Loans		C & I Loans		Loans to Individuals				All Other Loan Types	
						Installment		Single Payment			
		Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
PHILLIPSBURG NATIONAL	$ 13,527	$ 7,201	53.2%	$ 1,427	10.5%	$ 2,881	21.3%	$1,441	10.7%	$ 577	4.3%
SECOND NATIONAL	9,655	7,320	75.8	510	5.3	918	9.5	719	7.4	188	1.9
Phillipsburg Trust	4,289	3,078	71.8	121	2.8	200	4.7	891	20.8	-	-
Easton National	31,152	15,069	48.4	3,219	10.3	6,983	22.4	3,672	11.8	2,209	7.1
Northampton National	6,268	4,446	70.9	1,100	17.5	None	-	673	10.7	49	0.8
Lafayette Trust	10,561	6,656	63.0	1,279	12.1	1,511	14.3	29	0.3	1,086	10.3
Nazareth National	10,470	6,619	63.2	1,445	13.8	684	6.5	723	6.9	999	9.5
All PE Banks	85,922	50,389	58.6	9,101	10.6	13,177	15.3	8,148	9.5	5,108	5.9
All Warren County Banks	65,324	37,522	57.4	6,507	10.0	15,532	23.8	1/	1/	5,763	8.8
All Banks in New Jersey	6,714,648	2,836,154	42.2	1,465,348	21.8	1,788,787	26.6	1/	1/	624,359	9.3

1/ Installment and Single Payment Loans are not shown separately, but as Loans to Individuals.

Source: Reports of Condition of individual banks. Bank Groups from FDIC Composite Reports published in March 1968, based on Reports of Condition of insured banks.

GX 43

LOAN RATIOS OF ALL COMMERCIAL BANKS IN PHILLIPSBURG-EASTON, DECEMBER 31, 1967

(Dollar amounts in thousands)

Bank / Bank Group	Total Loans (Gross)	Real Estate Loans		C & I Loans		Loans to Individuals				All Other Loan Types	
						Installment		Single Payment			
		Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
PHILLIPSBURG NATIONAL	$ 14,643	$ 7,893	53.9%	$ 2,375	16.2%	$ 2,822	19.3%	$1,209	8.3%	$ 344	2.3%
SECOND NATIONAL	10,702	7,680	71.8	1,320	12.3	877	8.2	633	5.9	192	1.8
Phillipsburg Trust	4,885	3,374	69.1	462	9.5	157	3.2	892	18.3	-	-
Easton National	33,371	16,997	50.9	3,519	10.5	7,245	21.7	3,521	10.6	2,089	6.3
Northampton National	6,504	4,600	70.7	1,072	16.5	None	-	764	11.7	68	1.0
Lafayette Trust	11,970	7,481	62.5	1,315	11.0	1,666	13.9	1,182	9.9	326	2.7
Nazareth National	11,073	6,994	63.2	1,402	12.7	644	5.8	928	8.4	1,105	10.0
All P-E Banks	93,148	55,019	59.1	11,465	12.3	13,411	14.4	9,129	9.8	4,124	4.4
All Warren County Banks	73,051	40,949	56.1	8,824	12.1	16,857	23.1	1/	1/	6,421	8.8
All New Jersey Banks	7,301,263	3,007,341	41.2	1,608,421	22.0	1,902,621	26.1	1/	1/	782,880	10.7

1/ Installment and Single Payment Loans are not shown separately, but as Loans to Individuals.

Source: Reports of Condition of individual banks. Bank Groups from FDIC Composite Reports published in March 1968, based on Reports of Condition of insured banks.

GX 46

LENDING LIMITS OF COMMERCIAL BANKS IN PHILLIPSBURG-EASTON, DECEMBER 31, 1966

	Lending Limit 1/
PHILLIPSBURG NATIONAL BANK	$100,701
SECOND NATIONAL BANK	107,414
RESULTING BANK	208,115
Phillipsburg Trust Co.	53,167
Easton National Bank	587,049
Northampton National Bank	369,259
Lafayette Trust Bank	224,362
Nazareth National Bank	294,354

1/ Lending limit compiled on basis of 10 percent of the sum of capital, surplus and undivided profits.

Source: Reports of Condition of Individual Banks, December 31, 1966.

GX 48

NUMBER OF COMMERCIAL BANKS IN THE U.S. AND DISTRIBUTION OF TOTAL DEPOSITS ACCORDING TO SIZE CATEGORIES OF BANKS, JUNE 30, 1966

Deposit Size of Bank (millions)	Number of Banks		Total Deposits			
			Number of Accounts		Dollar Value	
	Number	Percent	Number	Percent	Amount	Percent
All Banks	13,757	100.0%	173,564,643	100.0%	$344,100,947	100.0%
Under $1	672	4.9	511,561	0.3	452,060	0.1
$1-2	1,832	13.3	2,506,222	1.4	2,762,350	0.8
$2-5	4,269	31.0	12,022,821	6.9	14,352,247	4.2
$5-10	3,166	23.0	17,729,490	10.2	22,385,126	6.5
$10-25	2,333	17.0	26,866,777	15.5	36,130,796	10.5
Subtotal: All Banks under $25	12,272	89.2	59,636,871	34.3	76,082,579	22.1
$25-50	739	5.4	16,415,686	9.5	25,704,519	7.5
$50-100	336	2.4	12,823,492	7.4	23,080,016	6.7
$100-500	320	2.3	30,668,450	17.7	64,904,762	18.9
$500-1,000	52	0.4	13,060,881	7.5	34,738,142	10.1
$1,000 and over	38	0.3	40,959,263	23.6	119,590,929	34.8

Source: Federal Deposit Insurance Corporation, National Summary of Accounts and Deposits in All Commercial Banks, June 30, 1966

[1474] GX 49

SURVEY OF DEPOSIT ACCOUNTS, GIRARD TRUST BANK, RIEGELSVILLE, PA. OFFICE, MAY 1967

Riegelsville

Savings Banks

Easton, Pa.	1 793. 700 -
Riegelsville, Pa.	618. 700 -
Bethlehem, Pa	117 400 -
Allentown, Pa	32. 200 -
Durham, Pa.	13. 000 -
Ferndale, Pa.	35. 000 -
Kintnersville, Pa.	146. 700 -
Upper Black Eddy, Pa.	51. 100 -
Ottsville, Pa.	72. 600 -
Riegelsville, Pa.	13. 100 -
Plumstedville, Pa.	8. 000 -
Hellertown, Pa.	64. 300 -
Raubsville, Pa.	29. 100 -
Dublin Pa.	15. 000 -
Doylestown, Pa.	73. 500 -
Hokendauqua, Pa.	35. 000 -
Pt. Pleasant, Pa.	26. 700 -
Springtown, Pa.	5. 100 -
Silverdale, Pa.	15. 000 -
Center Valley, Pa.	2. 000 -
Fen Argyl, Pa.	48. 600 -
Phillipsburg, N. J.	637. 100 -
Milford, N. J.	230. 200 -
Bloomsbury, N. J.	19. 000 -
Alpha, N. J.	82. 100 -
Cennamison, N. J.	8. 100 -
Little York, N. J.	13. 700 -
Flemington, N. J.	3. 500 -

No. Plainfield, N.J.	10.00 -
Mt. Holly, N.J.	100 -
Dover, N.J.	5.000 -
Hopewell, N.J.	500 -
Ackermanville, Pa.	3.000 -
Hamburg, Pa.	1.000 -
Bangor, Pa	125.500 -
Phila. Pa	15.000 -
Tatamy, Pa	31.400 -
Martin Creek, Pa.	10.000 -
Nazareth, Pa.	3.800 -
Levittown, Pa.	1.000 -
Wind Gap, Pa.	1.000 -
York, Pa	15.000 -
Mountain Home, Pa.	10.000 -
Blakeslee, Pa.	10.000 -
Mohnton, Pa.	2.000 -
Quakertown, Pa.	22.000 -
Fullerton, Pa.	2.000 -
Mt. Bethel, Pa.	15.000 -
Coopersburg, Pa.	10.000 -
Stroudsburg, Pa.	8.000 -
Saylorsburg, Pa.	20.000 -
Warwick, N.Y.	10.000 -
Massachusetts	3.000 -
Beverly Hills, Calif.	5.000 -
Winter Haven, Florida	6.000 -
Saudi Arabia	11.500 -
Danbury, Conn	2.500 -
Shamrock, Florida	2.500 -
Bolling Field, D.C.	5.000 -

Stewartsville, N.J.	42.200 -
Offord, N.J.	25.000 -
Frenchtown, N.J.	57.900 -
Belvidere, N.J.	56.500 -
Washington, N.J.	35.900 -
Asbury, N.J.	5,000 -
High Bridge, N.J.	6.000 -
Pittstown, N.J.	11.000 -
Broadway, N.J.	10.000 -
Annandale, N.J.	10.000 -
Glen Gardner, N.J.	1.100 -
✓ Riegelsville, N.J.	15.000 -
Lumberville, Pa.	12.000 -
Kellers Church, Pa.	6.000 -
✓ Erwinna, Pa.	6.200 -
✓ Revere, Pa.	32.300 -
✓ Pleasant Valley, Pa.	13.000 -
Fountainville, Pa.	1.500 -
Lansdale, Pa.	3.000 -
Bedminster, Pa.	7.000 -
Ingland, Pa.	~~15.000~~ 500 -
	4927.300 -

Riegelsville

Demand Accounts

✓ Riegelsville, Pa.	436,898 -
✓ Ferndale, Pa	55,319 -
✓ Ottsville, Pa	119,609 -
✓ Kintnersville, Pa.	150,855 -
✓ Durham, Pa	30,729 -
✓ Upper Black Eddy, Pa.	36,344 -
✓ Revere, Pa.	82,380 -
✓ Raubsville, Pa.	32,357 -
✓ Milford, N. J.	41,129 -
Doylestown, Pa.	33,015 -
✓ Easton, Pa.	110,475 -
✓ Riegelsville, N. J.	70,537 -
Hellertown, Pa.	19,479 -
✓ Phillipsburg, N. J.	112,721 -
✓ Springtown, Pa.	6,924 -
Pipersville, Pa.	4,115 -
Bethlehem, Pa.	15,833 -
Stewartsville, N. J.	2,361 -
✓ Alpha, N. J.	3,733 -
✓ Erwinna, Pa.	19,749 -
Bloomsbury, N. J.	52,124 -
Out districts - Penna.	64,512 -
- New Jersey	33,272 -
- New York ✓	40,795 -
Foreign	26,534 -
Total	1,601,779 -

Savings Accounts

✓ Riegelsville, Pa.		1.269.380 -
✓ Riegelsville, N.J.		164,122 -
✓ Kentnersville, Pa.		589,190 -
✓ Revere, Pa.		184.655 -
✓ Easton, Pa.		487,264 -
✓ Raubsville, Pa.		115.070 -
✓ Milford, N.J.		583.771 -
Frenchtown, N.J.		43.076 -
✓ Ferndale, Pa.		193,511 -
Pipersville, Pa.	(6/2 Accts.)	3.7.443 -
Bloomsbury, N.J.		83.594 -
✓ Alpha, N.J.		121,615 -
✓ Ottsville, Pa.		210,066 -
✓ Upper Black Eddy, Pa.		301,142 -
✓ Phillipsburg, N.J.		346,746 -
Stewartsville, N.J.		27.489 -
✓ Durham, Pa.		36,531 -
✓ Springtown, Pa.		31,330 -
Coopersburg, Pa.		10.409 -
Short Hills, N.J.		4.616 -
Tatamy, Pa.		317 -
Bath, Pa.		6.577 -
Pittstown, N.J.		10.049 -
Doylestown, Pa.	(7 Accts)	35,440 -
Quakertown, Pa.		14.782 -
Plumsteadville, Pa.	(2 Accts)	7.442 -
Schnecksville, Pa.		418 -

Nazareth, Pa.	107 -
Point Pleasant, Pa.	1.242 -
Little York, N.J.	1.277 -
Allentown, Pa.	5.734 -
Kellers Church, Pa.	12,666 -
Frederick, Pa.	9.162 -
Pennsauken, N.J.	376 -
Fanwood, N.J.	3.083 -
Erwinna, Pa.	23.552 -
Philadelphia, Pa.	21.368 -
Hellertown, Pa.	49.828 -
Bedminster, Pa	13.896 -
Wind Gap, Pa.	7.326 -
Bethlehem, Pa.	47.522 -
Pleasant Valley, Pa	11.896 -
Hatboro, Pa.	1.679 -
Lumberville, Pa.	2.812 -
Bangor, Pa.	12.681 -
Opa Locka, Fla.	8 -
Long Island, N.Y.	9.691 -
Walnut Port, Pa.	5.696 -
Washington, D.C.	381 -
North Plainfield, N.J.	767 -
West Orange, N.J.	2.639 -
Greenville, N.C.	2.271 -
New York City	7.283 -
Point Pleasant, N.J.	9.577 -
Dallas, Tex.	87 -
Avon Park, Fla.	5.785 -
San Diego, Calif.	50 -

Recap

[1481]

Parkesail, Pa.	8.
Hopewell, N J	495 -
Washington, N J	104 -
Roebledge, Pa.	65 -
Allentown, N J	17.780 -
Baptistown, N J.	9.559 -
High Bridge, N J.	35 -
Union, N J.	90 -
Mountainside, N J	2.028 -
Catasauqua, Pa.	792 -
Port Argyl, Pa.	5.116 -
East Brady, Pa.	1.000 -
Ruddlestown, Pa.	9.237 -
Annandale, N J.	329 -
Broadway, N J.	13.063 -
Glen Gardner, N J.	622 -
Glenside, Pa.	25 -
Mendo Park, N J.	229 -
Kearney, N J.	502 -
Dublin, Pa.	273 -
65 Towns - Pa. or N J.	5.177,051 -
13 Foreign States	466
	40,635 -
Total Savings Deposit	5,217,686 -

GX 50

GROWTH OF TOTAL DEPOSITS OF COMMERCIAL BANKS IN THE LEHIGH VALLEY AREA, 1962-1967

(Dollar amounts in thousands)

	Name of Bank	Total Deposits Dec. 1962	Dec. 1967	% Change 1962-1967
1	Hunterdon County Trust Co.	$ 5,084	$ 9,558	88.0
2	First National, Milford	10,166	18,785	84.8
3	Cement National, Northampton	19,325	34,926	80.7
4	Neffs National Bank	4,368	7,515	72.0
	Girard Trust	752,284	1,289,941	71.5
5	Flemington National	15,000	25,218	68.1
6	First National, Hope	6,631	10,981	65.6
7	First Natl Bank of Coopersburg	4,485	7,411	65.2
8	PHILLIPSBURG NATIONAL	13,645	22,358	63.9
9	First Natl Bank in Bangor	10,226	15,603	52.6
10	First Natl Bank of Bath	7,553	11,367	50.5
11	Hunterdon County National	35,578	53,458	50.3
12	Portland National Bank	3,512	5,274	50.2
13	Merchants Natl Bank of Allentown	82,785	123,741	49.5
14	First Natl Bank of Belvidere	10,734	16,029	49.3
15	Slatington National B & T	4,899	7,281	48.6
16	First National, Blairstown	3,973	5,891	48.3
17	Hackettstown National	7,121	10,174	42.9
18	Phillipsburg Trust Co.	8,502	12,078	42.1
19	Lafayette Trust Bank	17,130	24,309	41.9
20	Lehigh Valley Trust Co.	50,324	71,379	41.8
21	Saucon Valley Trust Co.	8,165	11,559	41.6
22	Washington TrustCo.	10,262	14,506	41.4
23	Pen Argyl National	6,832	9,637	41.1
24	First Natl Bank of Allentown	127,107	179,148	40.9
25	Citizens National, Bloomsbury	3,414	4,788	40.2
26	SECOND NATIONAL	11,535	16,131	39.8

GROWTH OF TOTAL DEPOSITS OF COMMERCIAL BANKS IN THE LEHIGH VALLEY AREA, 1962-1967

(Dollar amounts in thousands)

	Name of Bank	Total Deposits Dec. 1962	Total Deposits Dec. 1967	% Change 1962-1967
27	Walnutport State Bank	$ 3,028	$ 4,215	39.2
28	Nazareth National B & T	20,581	28,706	39.5
29	Citizens National, Slatington	4,274	5,938	38.9
30	Peoples Natl Bank of Hackettstown	12,470	17,298	38.5
31	Second National Bank of Lazareth	9,835	13,314	35.4
32	First National, Bethlehem	76,507	102,898	34.5
33	First Natl Bank of Washington	12,780	17,051	33.4
34	New Tripoli National Bank	5,789	7,475	29.1
35	Union B & T Co. of Eastern Pa.	62,076	79,072	27.4
36	Merchants National, Bangor	11,978	15,205	26.9
37	First Clinton National Bank	15,402	19,396	25.9
38	Citizens Bank of Wind Gap	4,136	5,208	25.9
39	Easton National	56,151	67,722	20.6
40	Northampton National	19,836	18,961	-4.4
41	First Natl Bank of Pen Argyl	4,443	4,344	-2.2
	Girard Trust (Riegelsville Office)	NA	NA	NA

NA - Not available

Source: Polk's Bank Directory, 137th and 147th editions, March 1963 and March 1968.

GX 89

BRANCHING STATUS IN COMMUNITIES OUTSIDE COURT'S GEOGRAPHIC MARKET

As of October 1, 1969

Burlington County

Branching Status	Communities	Population 1960	Population July, 1968
Open	Allamuchy Twp.	973	1,170
Closed	Blairstown Twp.	1,797	2,000
Open	Frelinghuysen Twp.	845	950
Closed	Hackettstown Town	5,276	9,760
Open	Hardwick Twp.	2,039	2,340
Closed	Hope Twp.	833	1,010
Closed	Independence Twp.	1,509	1,970
Open	Knowlton Twp.	1,442	1,670
Open	Liberty Twp.	760	850
Open	Pahaquarry Twp.	63	70

Hunterdon County

Closed	Califon Boro	777	990
Closed	Clinton Twp.	3,770	4,860
Open	Delaware Twp.	2,485	3,140
Closed	East Amwell Twp.	1,981	2,440
Closed	Flemington Boro	3,232	4,060
Closed	Franklin Twp.	1,777	2,120
Closed	Frenchtown Boro	1,340	1,470
Closed	Kingwood Twp.	1,841	2,160

Hunterdon County Continued

Branching Status	Communities	Population 1960	Population July, 1966
Closed	Lambertville City	4,269	4,390
Closed	Lebanon Boro	880	960
Open	Lebanon Twp.	2,841	3,420
Closed	Raritan Twp.	4,545	6,710
Closed	Readington Twp.	6,147	7,340
Closed	Stockton Boro	320	380
Closed	Tewksbury Twp.	1,908	2,530
Open	West Amwell Twp.	1,683	2,180

Source: Intervenor's exhibit No. 37.

GX 90

BRANCHING STATUS IN COMMUNITIES WITHIN COURT'S GEOGRAPHIC MARKET

As of October 1, 1969

Warren County

Branching Status	Communities	Distance in Mileage from Phillipsburg	Population 1960	Population July 1968
Closed	Phillipsburg	-	18,502	18,510
Closed	Lopatcong Twp	Adjacent	2,703	3,220
Closed	Pohatcong Twp	Adjacent	3,543	3,960
Closed	Greenwich Twp	7	1,397	1,580
Closed	Alpha Borough	3	2,406	2,850
Open but pending application	Harmony Twp	5	2,039	2,340
Open but pending application	Franklin Twp	11	1,729	1,950
Closed	White Twp	12	1,832	2,040
Closed	Belvedere	11.5	2,636	2,940
Closed	Oxford	14	1,657	1,740
Closed	Washington	12	5,723	6,460
Closed	Washington Twp	13	3,055	3,620
Closed	Mansfield Twp	15	2,130	3,210
Hunterdon County				
Closed	Holland Twp	8.5	2,495	3,490
Open	Bethlehem Twp	11	1,090	1,250
Closed	Union Twp	16	1,717	1,880
Open	Alexandria Twp	14	1,629	1,920

Hunterdon County Continued

Branching Status	Communities	Distance in Mileage from Phillipsburg	Population 1960	Population July 1968
Closed	Milford	10.5	1,114	1,370
Open	Hampton	13	1,135	1,330
Closed	Glen Gardner	14	787	850
Closed	High Bridge	17	2,148	2,480
Closed	Clinton	15.5	1,158	1,490
Closed	Bloomsbury	7	838	920

Source: Intervenor's exhibit No. 37.

DX 1

EXHIBIT D-1

FINANCIAL ASSETS HELD BY HOUSEHOLDS IN U.S.

Dec. 31, 1967

(in billions of dollars)

		Percent Distribution
Demand deposits and currency*	100.9	.0624
Savings deposits at Commercial Banks	134.5	.0831
Savings accounts at Savings Institutions **	195.2	.1207
Life insurance reserves	115.7	.0715
Pension fund reserves	182.2	.1126
U.S. Government savings bonds	51.0	.0315
Other U.S. Government securities	32.8***	.0203
State and Local Government securities	40.8	.0252
Corporate and foreign bonds	6.3	.0039
Corporate stock at market value	726.8	.4492
Mortgages	9.3	.0057
Miscellaneous	22.4	.0138
Total	1617.9	.9999

Source: Flow of Funds Accounts; Table 5, Federal Reserve Bulletin, May 196

*Total currency in circulation outside banks amounted to 39.0; and since the majority of this was held by households, no precise breakdown between demand deposits and currency is available.

**Includes mutual savings banks, savings and loan associations, and credit unions.

***Estimated.

FINANCIAL ASSETS HELD BY HOUSEHOLDS IN U.S.

Dec. 31, 1966
(in billions of dollars)

		Percent Distribution
Demand deposits and currency*	88.6	.0626
Savings deposits at Commercial banks	118.7	.0839
Savings accounts at savings institutions**	178.8	.1264
Life insurance reserves	110.8	.0783
Pension fund reserves	159.2	.1125
U.S. Government Savings bonds	50.1	.0354
Other U.S. Government securities	35.6	.0251
State and Local Government securities	40.6	.0287
Corporate and foreign bonds	5.7	.0040
Corporate stock at market value	596.3	.4216
Mortgages	9.9	.0070
Miscellaneous	19.8	.0140
TOTAL	1414.1	.9995 error due to rounding

Source: Flow of Funds Accounts; Federal Reserve Bulletin, February 1968.

* Total currency in circulation outside banks amounted to 39.0; and since the majority of this was held by households, no precise breakdown between demand deposits and currency is available.

** Includes mutual savings banks, savings and loan associations, and credit unions.

DX 2

EXHIBIT D-2

ONE-FOUR FAMILY MORTGAGES BY HOLDER

Dec. 31, 1967

(In billions of dollars)

		Percent Distribution
Commercial banks	34.9	.1478
Savings and loan associations	103.2	.4371
Mutual savings banks	33.5	.1418
Credit Unions	.7	.0029
Life insurance companies	30.0	.1271
Non-insured pension plans	3.9	.0165
Finance companies	4.3	.0182
Nonfinancial business	7.6	.0322
Individuals and other (residual)	18.0	.0762
	236.1[P]	.9993
		error due to rounding

Source: Flow of Funds Accounts; Federal Reserve Bulletin, May 1968.

[P] Preliminary estimate.

ONE-FOUR FAMILY MORTGAGES BY HOLDER

Dec. 31, 1966
(in billions of dollars)

replaced

		Percent Distribution
Commercial banks	32.5	.1450
Savings and loan associations	97.8	.4364
Mutual savings banks	31.7	.1414
Credit Unions	0.6	.0026
Life Insurance companies	30.4	.1356
Non-insured pension plans	3.8	.0169
Finance companies	3.9	.0174
Nonfinancial business	6.5	.0290
Individuals and other (residual)	16.9	.0754
	224.1	.9997

error due to rounding

Source: Flow of Funds Accounts; Federal Reserve Bulletin, February 1968.

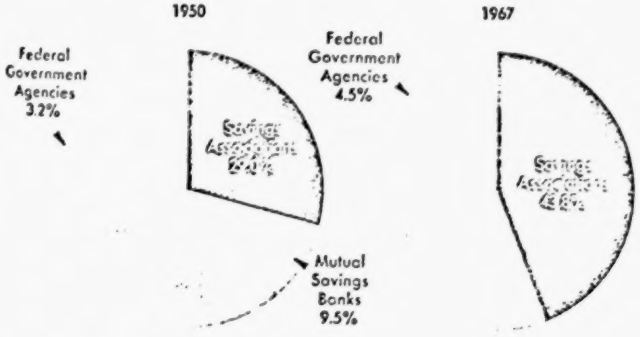
DX 2a

TABLE 21 • Mortgage Loans Outstanding on One- to Four-Family Nonfarm Homes, by Type of Lender
(Percentage Distribution)

Year-End	Savings and Loan Associations	Mutual Savings Banks	Commercial Banks	Life Insurance Companies	Federal Government Agencies	Individuals and Others	Total
1950	29.0%	9.5%	21.0%	18.8%	3.2%	18.4%	100.0%
1951	28.7	10.3	19.9	20.5	4.0	16.6	100.0
1952	30.2	10.6	19.2	20.1	4.3	15.6	100.0
1953	31.8	11.2	18.2	20.0	4.2	14.7	100.0
1954	33.0	11.9	17.6	20.0	3.7	13.8	100.0
1955	34.0	12.6	17.1	20.0	3.4	12.9	100.0
1956	34.3	13.1	16.4	20.3	3.6	12.3	100.0
1957	35.3	13.1	15.2	19.9	4.4	12.1	100.0
1958	36.4	13.3	15.0	19.0	4.0	12.3	100.0
1959	37.9	12.9	14.7	18.0	4.8	11.8	100.0
1960	39.2	13.0	13.6	17.6	5.1	11.5	100.0
1961	40.8	13.1	13.1	16.8	4.8	11.5	100.0
1962	41.9	13.3	13.3	15.9	4.4	11.2	100.0
1963	43.4	13.6	13.7	15.0	3.4	11.0	100.0
1964	44.1	13.9	13.8	14.5	3.0	10.7	100.0
1965	44.2	14.1	14.3	14.0	3.0	10.4	100.0
1966	43.6	14.2	14.7	13.6	3.9	10.1	100.0
1967*	43.8	14.2	14.7	12.7	4.5	10.0	100.0

Note: Components may not add to 100% due to rounding.
*Preliminary.
Source: Federal Home Loan Bank Board.

CHART 19 • Mortgage Loans Outstanding on One- to Four-Family Nonfarm Homes, by Type of Lender, 1950 and 1967



Source: Federal Home Loan Bank Board.

Source: Savings & Loan Fact Book, 1968

DX 2b

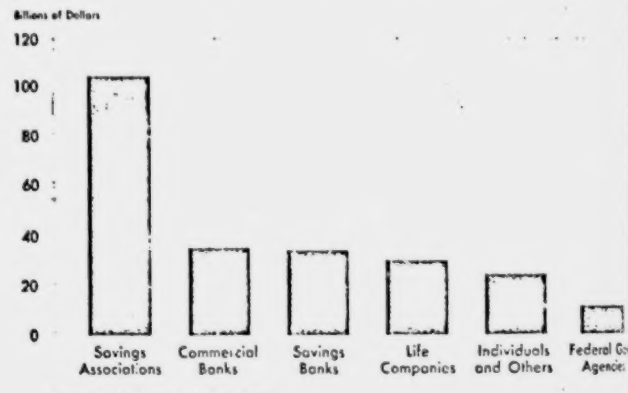
TABLE 20 • Mortgage Loans Outstanding on One- to Four-Family Nonfarm Homes, by Type of Lender

(Millions of Dollars)

Year-End	Savings and Loan Associations†	Mutual Savings Banks	Commercial Banks	Life Insurance Companies	Federal Government Agencies	Individuals and Others	Total
1950	$13,116	$ 4,312	$ 9,481	$ 8,478	$1,468	$ 8,315	$ 45
1951	14,844	5,331	10,275	10,610	2,063	8,588	51
1952	17,645	6,194	11,250	11,757	2,523	9,131	58
1953	20,999	7,373	12,025	13,195	2,770	9,732	66
1954	25,004	9,002	13,300	15,153	2,770	10,448	75
1955	30,001	11,100	15,075	17,661	3,015	11,398	88
1956	34,004	12,990	16,245	20,130	3,534	12,134	99
1957	37,996	14,110	16,365	21,441	4,687	12,998	107
1958	42,890	15,640	17,628	22,374	4,662	14,492	117
1959	49,535	16,887	19,200	23,583	6,256	15,393	130
1960	55,386	18,369	19,242	24,879	7,136	16,276	141
1961	62,395	20,022	20,038	25,776	7,310	17,542	153
1962	69,761	22,149	22,129	26,397	7,359	18,687	166
1963	79,058	24,717	24,910	27,331	6,169	20,002	182
1964	87,172	27,394	27,220	28,706	6,001	21,215	197
1965	94,225	30,064	30,401	29,907	6,396	22,162	213
1966	97,445	31,673	32,833	30,389	8,836	22,592	223
1967*	103,231	33,562	34,519	29,995	10,718	23,582	235

*Preliminary.
†Beginning in 1966, includes real estate sold on contract; 1967 data exclude mortgage holdings of ... associations in liquidation.
Source: Federal Home Loan Bank Board.

CHART 18 • Mortgage Loans Outstanding on One- to Four-Family Nonfarm Homes, by Type of Lender, Year-End 1967



Source: Federal Home Loan Bank Board.

DX 3

EXHIBIT D-3

CONSUMER CREDIT BY HOLDER

Dec. 31, 1967

(in billions of dollars)

		Percent Distribution
Commercial banks	41.1	.4143
Savings and loans associations	1.5	.0151
Mutual savings banks	.5	.0050
Credit unions	9.2	.0927
Finance companies	24.3	.2449
Individuals and others (residual)*	22.6	.2278
TOTAL	99.2	.9998

error due to rounding

Source: Federal Reserve Bulletin, May 1968

* Includes charge accounts, etc.

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TABLE D-4

COMPARISON OF ACTIVITIES OF PHILLIPSBURG N.B., SECOND N.B.,

ALL BANKS IN TRADING AREA, WEEKLY REPORTING BANKS, AND ALL COMMERCIAL BANKS IN UNITED STATES+

	P.N.	Figures as a % of total assets	S.N.	Figures as a % of total assets	All banks* trading area	Figures as a % of total assets	Weekly Reporting Banks**	Figures as a % of total assets	Dec. 30, 1967 All banks in U.S.**	Figures as a % of tota assets
Total Assets	23861		17255		1103701		269179		454603	
Commercial and Industrial loans	2375	9.95	1320	7.64	83652	7.58	65818	24.45	88979	19.57
Real Estate Loans	7893	33.08	7680	44.50	308610	27.96	28900	10.74	59019	12.98
Loans to Individuals (Consumer Credit)	4031	16.89	1510	8.75	223743	20.27	16274	6.05	51845	11.40
Total Loans	14643	61.36	10702	62.02	664243	60.18	209149	77.70	238660	52.50
Demand Deposits	6542	27.41	4550	26.36	319120	28.91	125562	46.65	211929	46.62
Time and Savings Deposits	15816	66.28	11455	66.38	682476	61.83	102809	38.19	186276	40.98

* See List on Table - All totals without Girard Trust Bank, Lehigh Valley and Union Bank but including PNB and SNB.

**341 weekly reporting banks, each with assets over $100 million, Federal Reserve Bulletin, February 1968.

***Taken from Call Report No. 82 of FDIC, December 30, 1967. (figures in thousands of dollars)

+ Figures for PN, SN and banks in trading area in thousands of dollars, figures for weekly reporting banks and all banks in U.S. are in millions of dollars.

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(41)

TOTAL ASSETS OF ALL COMMERCIAL BANKS
IN THE TRADING AREA AS OF DEC. 31, 1967

(millions of dollars)

illipsburg National Bank and Trust Company	23861
cond National Bank of Phillipsburg	17255 ✓
illipsburg Trust Company	13161
rst National Bank of Belvidere, N.J.	17303
rst National Bank of Washington, N.J.	20494
shington Trust Company, Washington, N.J.	15857
rst National Bank of Blairstown, N.J.	6439
rst National Bank of Hope, N.J.	11624
kettstown National Bank, Hackettstown, N.J.	11349
ples National Bank, Hackettstown, N.J.	19202
izens National Bank	5225
erdon County Trust Company, Califon, N.J.	10681
st Clinton National Bank, Clinton, N.J.	21199
ington National Bank, Flemington, N.J.	26964
t National Bank of Milford, N.J.	20443
erdon County National Bank, Flemington, N.J.	57716
t National Bank of Allentown, Pa.	202087
gh Valley Trust Company, Allentown, Pa.	76866
hants National Bank of Allentown, Pa.	143554
s National Bank, Neffs, Pa.	8425
Citizens National Bank of Slatington, Pa.	6492
ington National Bank	8198
ew Tripoli National Bank, New Tripoli, Pa.	8632

First National Bank of Coopersburg, Pa.	8144
The Union Bank and Trust of Eastern Pennsylvania, Bethlehem, Pa.	93747
First National Bank in Bangor, Pa.	16872
Merchants National Bank of Bangor, Pa.	16605
First National Bank & Trust Company of Bethlehem, Pa.	115377
Easton National Bank & Trust Company, Easton, Pa.	75591*
Lafayette Trust Bank, Easton, Pa.	27705
Northampton National Bank, Easton, Pa.	23225*
Nazareth National Bank & Trust Company, Nazareth, Pa.	32014
Second National Bank of Nazareth, Nazareth, Pa.	15187
Portland National Bank, Portland, Pa.	6046
First National Bank of Pen Argyl, Pa.	4953
Pen Argyl National Bank, Pen Argyl, Pa.	10722
Citizens Bank of Wind Gap, Wind Gap, Pa.	5884
Cement National Bank of Northampton, Pa.	39250
Saucon Valley Trust Company, Hellertown, Pa.	12947
Walnutport State Bank, Walnutport, Pa.	4622
First National Bank of Bath, Pa.	12445
TOTAL =	1274314*

*(excludes Girard Trust)

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ABE: A REPRESENTATIVE AREA OF THE U.S.

U.S. Population	1960	178,464,236
ABE Population	1960	492,168
ABE as percent of U.S. population		.0022

	ABE	U.S.
Proportion of Population in Urban Areas	71.3	70.1
Proportion of Population over 65 Years Old	10.4	9.2
Population growth 1950-1960	12.4	17.9
Proportion Population in White Collar Occupations	35.6	46.4
Median Income	5845	5620
Proportion of Population in Owner Occupied Housing	70.6	64.4

	ABE	U.S.	ABE as % of U.S.
Bank deposits (1960)	625,458,000	266,885,000,000	.00234

DX 7

TABLE D-7

COMMERCIAL BANK DEPOSITS - (time and demand) 1950-1964

Rank 1960	SMSA	1950	1964	Absolute Change	Percent Change
47	Akron, Ohio	335,348	795,883	460,535	137
48	Norfolk-Portsmouth, Va.	253,737	437,389	183,652	72
49	Gary, Hammond-East, Chicago	DNE	507,361	DNE	--
50	Fort Worth, Texas	490,069	1,012,361	522,292	107
51	Syracuse, N. Y.	477,367	1,237,777	760,410	159
52	Hartford, Conn.	835,083	1,636,601	801,518	96
53	Oklahoma City, Okla.	440,550	1,034,377	593,787	135
54	Youngstown-Warren, Ohio	421,796	506,328	84,532	20
55	Honolulu, Hawaii	DNE	750,563	DNE	--
56	Springfield-Chicopee-Holyoke	599,647	1,119,410	519,763	87
57	ABE	397,220	828,583	431,363	108
58	Nashville, Tenn.	395,864	932,206	536,342	135
59	Grand Rapids, Mich.	279,895	801,062	521,167	186
60	Omaha, Nebr.-Iowa	526,472	727,684	200,812	38
61	Jacksonville, Fla.	367,084	733,730	366,646	100
62	Salt Lake City, Utah	374,064	734,210	360,146	96
63	Richmond, Va.	511,718	864,755	353,037	69
64	Tulsa, Oklahoma	469,664	805,206	335,542	71
65	Flint, Mich.	180,531	573,267	392,736	218
66	Wilmington, Del.-N.J.-Md.	543,661	895,352	351,691	65
67	Wichita, Kansas	265,752	536,083	270,331	102
43	Birmingham, Ala.	395,155	752,136	356,981	90
45	Sacramento, Calif.	477,511	1,176,115	698,604	146
				Average % =	106.3

Table D-7

	1950	1964	Δ64-50	Percent Change 127
United States	145,931,249	331,820,200	185,888,951	

Sources:

1964 Deposits from 1967 City and County Data Book

1950 Deposits from 1950 Distribution of Bank Deposits by Counties and Cities -- Board of Governors of the Federal Reserve System.

DNE: Did not exist.

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PERCENTAGE OF COMMERCIAL BANK DEPOSITS HELD BY THE LARGEST BANKS IN ALL STANDARD METROPOLITAN AREAS OVER 300,000 IN POPULATION IN WHICH BRANCHING IS PERMITTED, 1/ AS OF JUNE 30, 1966

SMSA	Population (1960)	Number of Institutions	Total Deposits (in $000)	Percent of Commercial Bank Deposits in SMSA, held by the following banks: Largest	3 Largest	5 Largest
Allentown Bethlehem Easton Before Proposed Merger		37	936,468	17.7	39.1	53.8
After Proposed Merger		36	936,468	17.7	39.1	53.8
Average, All		1,583	179,479,814	29.8	62.9	77.7
SMSA						
Akron, Ohio	605,367	11	901,983	41.8	75.9	88.0
Albany-Schenectady Troy, New York	657,503	18	1,423,969	32.0	70.4	82.6
Allentown-Bethlehem Easton, Pa.-N.J.	492,168	37	936,468	17.7	39.1	53.8
Anaheim-Santa Ana-Garden Grove, Calif.	703,925	22	1,344,106	39.9	72.1	82.0
Atlanta, Georgia	1,017,188	46	2,407,992	26.7	69.7	85.5
Baltimore, Md.	1,727,023	28	2,054,325	27.3	65.1	88.3
Birmingham, Ala.	634,864	10	961,835	55.4	91.6	97.6
Boston, Mass.	2,595,481	77	5,593,296	38.8	61.8	73.4
Bridgeport, Conn.	337,983	7	434,742	41.6	92.9	99.1
Buffalo, New York	1,306,957	10	1,994,963	49.0	94.6	98.0
Canton, Ohio	340,345	14	461,777	23.7	61.9	79.9
Charlotte, N.C.	316,781	16	806,453	43.6	83.7	91.5
Cincinnati, Ohio-Ky Indiana	1,268,479	49	1,817,465	27.4	72.1	83.2

SMSA	Population (1960)	Number of Institutions	Total Deposits (in $000)	Percent of Commercial Bank Deposits In SMSA, held by the following banks		
				Largest	3 Largest	5 Largest
Cleveland, Ohio	1,909,483	25	5,139,785	34.4	71.1	91.7
Columbus, Ohio	754,885	20	1,268,003	38.9	87.0	91.2
Dayton, Ohio	727,121	29	772,826	36.5	69.6	76.8
Detroit, Michigan	3,762,360	49	8,532,459	33.2	65.8	77.7
Flint, Michigan	416,239	13	694,048	37.0	88.1	94.0
Fresno, Calif.	365,945	12	573,085	53.9	78.9	90.1
Gary-Hammond-E. Chicago, Ind.	573,548	20	647,045	28.1	49.9	68.3
Grand Rapids, Mich.	461,906	19	972,546	42.7	77.1	83.6
Harrisburg, Pa.	371,653	31	572,576	25.1	58.3	73.0
Hartford, Conn.	549,249	17	1,155,698	45.1	91.2	94.6
Honolulu, Hawaii	500,409	7	937,795	36.2	77.8	90.4
Indianapolis, Ind.	916,932	38	2,087,085	34.2	83.8	87.1
Jersey City, N.J.	610,734	9	909,485	32.1	66.5	92.2
Knoxville, Tenn.	368,080	12	536,098	37.8	70.3	81.6
L.A.-Lg.Beach,Calif.	6,038,771	71	13,178,567	33.2	70.8	85.1
Louisville,Ky.-Ind.	725,139	17	1,203,985	27.6	69.0	87.9
Memphis, Tenn.-Ark.	674,583	13	1,303,061	40.1	90.3	94.4
Mobile, Alabama	363,389	11	436,859	38.8	87.5	91.6
Nashville, Tenn.	463,628	16	1,075,218	41.8	93.2	95.4
New Haven, Conn.	320,836	11	440,252	42.8	85.7	93.5
New Orleans, La.	907,123	23	1,818,587	30.8	63.6	82.5
New York, New York	10,694,632	102	58,890,323	19.7	47.5	67.2
Newark, N.J.	1,689,420	47	3,316,747	19.4	49.5	59.3
Norfolk-Portsmouth, Va.	578,507	10	569,904	47.4	71.6	84.5
Paterson-Clifton-Passaic,N.J.	1,186,873	32	2,280,504	15.5	43.5	59.0
Philadelphia, Pa., N.J.	4,342,899	88	8,075,958	18.3	48.8	67.8
Phoenix, Arizona	663,510	11	1,402,851	48.7	89.0	95.0
Pittsburgh, Pa.	2,405,435	48	5,916,817	52.1	82.1	90.6
Portland, Oregon-Wash.	821,897	21	1,674,111	38.0	83.0	88.0

SMSA	Population (1960)	Number of Institutions	Total Deposits (in $000)	Percent of Commercial Bank Deposit in SMSA, held by the following banks		
				Largest	3 Largest	5 Largest
Providence-Pow-tucket-Warwick, R.I.-Mass.	821,101	16	1,213,346	52.2	87.7	93.5
Richmond, Va.	436,044	12	1,040,260	30.3	74.4	93.1
Rochester, N.Y.	732,588	19	1,353,946	38.6	79.3	93.9
Sacramento, Calif.	625,503	17	1,296,129	46.7	83.1	89.8
Salt Lake City, Utah	447,795	23	840,981	24.4	68.1	82.6
San Bernardino-Ontario-Riverside, Calif.	809,782	17	1,081,411	39.4	81.9	91.2
San Diego, Calif.	1,033,011	13	1,422,322	35.5	75.1	92.6
S.F.-Oakland, Calif.	2,648,762	44	11,084,224	41.7	77.2	86.6
San Jose, Calif.	642,315	16	1,403,777	39.2	74.4	88.7
Seattle-Everett, Wash.	1,107,213	28	2,062,542	38.4	70.3	85.6
Springfield-Chicopee-Holy-oke, Mass.-Conn.	493,999	14	442,114	31.5	79.7	89.0
Syracuse, N.Y.	563,781	10	778,763	29.1	73.8	94.3
Tacoma, Washington	321,590	11	402,508	36.8	84.6	91.4
Toledo, Ohio-Mich.	630,647	25	935,158	37.3	68.5	78.6
Utica-Rome, N.Y.	330,771	12	411,586	44.9	86.5	91.4
Wash., D.C.-Md-Va.	2,001,897	68	3,919,621	18.0	43.0	55.8
Wilkes-Barre-Hazel-ton, Pa.	346,972	26	542,784	20.7	46.7	60.8
Wilmington, Del.-N.J.-Md.	414,565	23	802,044	40.6	75.8	85.1
Worcester, Mass.	328,898	8	334,762	49.3	90.1	96.9
Youngstown-Warren, Ohio	509,006	14	589,944	22.9	55.6	83.0

Sources: Bureau of the Census, Statistical Abstract of the United States, 1964; FDIC Computer Printouts for Summary of Deposits, June 30, 1966.

1/ The 62 SMSA's in this table account for approximately 52% of the deposits of all insured commercial banks.

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ASSET GROWTH OF COMMERCIAL BANKS IN TRADING AREA

(Dollar Amount in Thousands)

	Dollar Amount			Percentage Change		
	Dec. 1957	Dec. 1962	Dec. 1967	1957-1962	1962-1967	1957-1967
Phillipsburg Natl	$10,602	$14,805	$24,036	39.6	62.4	126.7
Second Natl	9,515	12,693	17,506	33.4	37.9	84.0
Phillipsburg Trust	5,894	9,020	13,161	53.0	45.9	123.3
First Natl of Belvidere, N.J.	6,280	11,644	17,303	85.4	48.6	175.5
First Natl of Washington, N.J.	10,854	14,366	19,210	32.4	33.7	77.0
Washington Trust, Washington, N.J.	8,237	11,143	15,857	35.3	42.3	92.5
First Natl of Blairstown, N.J.	3,324	4,404	6,439	32.5	46.2	93.7
First Natl of Hope, N.J.	4,302	7,009	11,624	62.9	65.8	170.2
Hackettstown Natl, Hackettstown,N.J.	5,188	7,848	11,361	51.3	44.8	119.0
Peoples Natl, Hackettstown, N.J.	9,179	13,775	19,288	50.1	40.0	110.1
Citizens Natl of Bloomsbury, N.J.	2,584	3,684	5,225	42.6	41.8	102.2
Hunterdon County Trust, Califon,N.J.	3,791	5,642	10,681	48.8	89.3	181.7
First Clinton Natl, Clinton,N.J.*	12,578	16,862	21,356	34.1	26.7	69.8
Flemington Natl, Flemington, N.J.	10,769	16,299	27,317	51.4	67.6	153.7
First Natl of Milford, N.J. **	7,119	11,209	20,614	57.5	83.9	189.6
Hunterdon County Natl,Flemington,N.J.	21,934	38,398	57,716	75.1	50.3	163.1
First Natl of Allentown, Pa.	92,593	144,630	204,161	56.2	41.2	120.5
Lehigh Valley Trust, Allentown, Pa.	40,565	54,129	76,866	33.4	42.0	89.5
Merchants Natl of Allentown, Pa.	54,577	93,800	144,953	71.9	54.5	165.6
Neffs Natl, Neffs, Pa.	3,755	5,049	8,451	34.5	67.4	125.1
The Citizens Natl of Slatington, Pa.	3,579	4,727	6,518	32.1	37.9	82.1

*combined figures for merging banks

**operates branch in former Head Office location, now main office in Raritan Tp.

	Dollar Amount			Percentage Change		
	Dec. 1957	Dec. 1962	Dec. 1967	1957-1962	1962-1967	1957-1967
Slatington Natl	$ 4,260	$ 5,610	$ 8,198	31.7	46.1	92.4
The New Tripoli Natl,New Tripoli,Pa.	5,111	6,682	8,678	30.7	29.9	69.8
First Natl of Coopersburg, Pa.	3,616	5,080	8,248	40.5	62.4	128.1
The Union Bank & Trust of Eastern Pa., Bethlehem, Pa.	35,213	73,245	93,747	108.0	28.0	166.2
First National in Bangor, Pa.	7,538	11,147	16,967	47.9	52.2	125.1
Merchants Natl of Bangor, Pa.	10,921	13,258	16,762	21.4	26.4	53.5
First Natl & Trust Co. of Bethlehem, Pa.	45,838	85,606	118,213	86.8	38.1	157.9
Easton Natl & Trust Co, Easton,Pa.*	52,811	63,299	76,322	19.9	20.6	44.5
Lafayette Trust Co., Easton, Pa.	14,677	19,323	27,808	31.7	43.9	89.5
Northampton Natl Bank, Easton, Pa.	24,397	23,537	23,225	-3.5	-1.4	-4.8
Nazareth Natl & Trust Co,Nazareth,Pa	18,741	23,197	32,204	23.8	38.8	71.8
Second Natl of Nazareth,Nazareth, Pa	6,960	11,185	15,272	60.7	36.5	119.4
Portland Natl, Portland, Pa.	3,343	4,008	6,085	19.9	51.8	82.0
First Natl of Pen Argyl, Pa.	3,565	4,929	4,953	38.3	0.5	38.9
Pen Argyl Natl, Pen Argyl, Pa.	5,076	7,547	10,816	48.7	43.3	113.1
Citizens Bank of Wind Gap,Wind Gap,Pa	3,481	4,677	5,884	34.4	25.8	69.0
Cement Natl of Northampton, Pa.	13,843	21,881	39,736	58.1	81.6	187.0
Saucon Valley Trust Co, Hellertown,Pa	6,936	9,157	12,947	32.0	41.4	86.7
Walnutport State, Walnutport, Pa.	2,295	3,327	4,621	45.0	38.9	101.3
First National of Bath, Pa.	5,807	8,276	12,507	42.5	51.1	115.4

*combined figures for merging banks

Source: Polk's Bank Directory, March 1958, March 1963, March 1968

DX 10
Table E-10

CHANGES IN NO. OF COMMERCIAL BANKS AND BRANCHES (Total U.S.)

	In Operation		Net Change		Banks Commencing Operation				Banks Ceasing Operation		
	Banks	Branches	Banks	Branches	Banks New	Banks Other	Branches New	Branches ABC*	Absorbed Banks	Banks Other	Branches
Dec. 31, 1966	14291	17845	-33	+1211	124	1	1131	117	133	25	66
Dec. 31, 1965	14324	16634	+43	+1188	202	0	1117	130	149	10	54
Dec. 31, 1964	14281	15446	+189	+1169	336	0	1083	125	136	11	39
Dec. 31, 1963	14092	14277	+141	+1199	300	0	1108	145	154	2	54
Dec. 31, 1962	13951	13078	-8	+1035	179	2	898	169	183	3	51
Dec. 31, 1961	13959	12043	-40	+937	113	1	872	126	138	16	61
Dec. 31, 1960	13999	11106	-5	+868	132	1	815	113	132	6	60

*Absorbed banks converted

Source: Annual Report of FDIC years 1966-1960.

DX 11

DISTRIBUTION OF ACCOUNTS OF THE RIEGELSVILLE BRANCH OF THE GIRARD TRUST BANK IN SELECTED CITIES AND AREAS BY POST OFFICE ADDRESS OF DEPOSITORS AS OF MAY 1967

LOCATION	DISTANCE IN MILES FROM RIEGELSVILLE, PA.	TOTAL OF SAVINGS & DEMAND ACCOUNTS & SAVINGS BOND	PERCENT OF TOTAL	SAVINGS ACCOUNTS	PERCENT OF TOTAL	DEMAND ACCOUNTS	PERCENT OF TOTAL	SAVINGS BOND	PERCENT OF TOTAL
Total Accounts	--	$ 11,787,400	--	$ 5,258,321	--	$ 1,601,799	--	$ 4,927,300	--
Easton, Pa.	6-1/2	2,391,439	20.29	487,264	9.27	110,475	6.90	1,793,700	37.16
Riegelsville, Pa.	--	2,324,978	19.72	1,269,380	24.14	436,898	27.28	618,700	12.56
Phillipsburg, N.J.	6-1/2	1,096,567	9.30	346,746	6.59	112,721	7.04	637,100	12.93
Milford, N.J.	6	855,100	7.25	583,771	11.10	41,129	2.57	230,200	4.67
Alpha, N.J.	5	207,448	1.76	121,615	2.31	3,733	.23	82,100	1.67
Bethlehem, Pa.	9-1/2	180,755	1.53	47,522	.90	15,833	.99	117,400	2.38
Bloomsbury, N.J.	7-1/2	154,698	1.31	83,594	1.59	52,104	3.25	19,000	.39
Doylestown, Pa.	20	141,955	1.20	35,440	.67	33,015	2.06	73,500	1.50
Bangor, Pa.	19	138,181	1.17	12,681	.24	--	--	125,500	2.55
Within Plaintiff's Trading Area	--	3,727,171	31.62	955,942	18.18	226,929	14.17	2,544,300	51.64
Within Defendant's Trading Area	--	10,871,682	92.23	5,005,307	95.19	1,397,175	87.23	4,469,200	90.70

DX 12

TABLE D-12

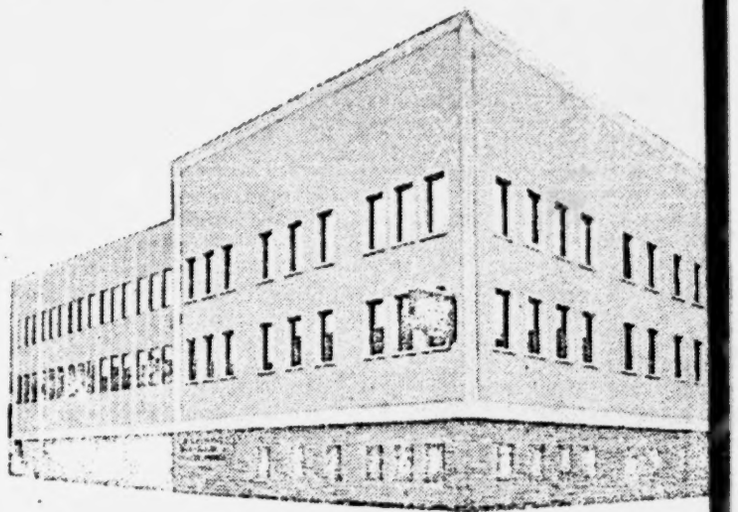
PHILLIPSBURG NATIONAL BANK, SECOND NATIONAL BANK
AND COMMERCIAL BANK COMPETITORS IN TRADING AREA
Dec. 30, 1967

	Assets	Assets ÷ Total Assets of Commercial Banks in Trading Area*	Rank in Trad
P.N.B.	23861	.0187	12 out of 41
S.N.B.	17255	.0135	19 out of 41
Merged Institution	41116	.0323	7 out of 41

Total Assets of commercial banks = 1274314

41 commercial banks include branches and main bank as one institution. Otherwise there are 97 banks and branches.

*Does not include Girard Trust.



Reach this entire market!

RETAIL SALES FOR THE ALLENTOWN - BETHLEHEM - EASTON METROPOLITAN AREA*	
TOTAL RETAIL SALES	**$ 765,090,000**
Food Stores	$175,767,000
Eating and Drinking Places	$ 61,337,000
General Merchandise	$148,751,000
Apparel Stores	$ 35,064,000
Furniture, Home Furnishings, Equipment Stores	$ 38,572,000
Automotive Dealers	$131,188,000
Gasoline Service Stations	$ 47,940,000
Lumber, Building and Hardware Dealers	$ 36,257,000
Drug Stores	$ 19,461,000
Liquor and Package Store (1.)	$ 14,487,122

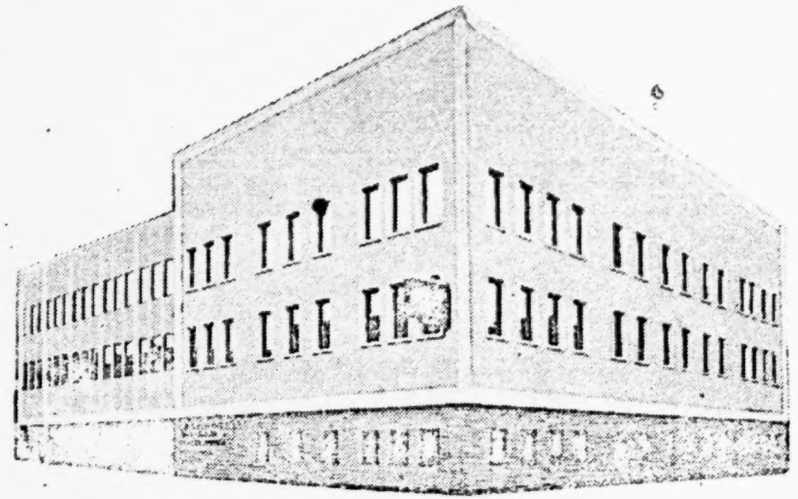
(1) Pa. Liquor Control Board Report #855 for year 1966

SELL PENNSYLVANI 3RD MARKET BEST With

Check the figures . . . NOTE THE SALES!

THE SALES VOLUME OF THE ALLENTOWN - BETHLEHEM - EASTON METROPOLITAN AREA IS THE THIRD LARGEST OF THE PENNSYLVANIA METROPOLITAN AREAS*

METROPOLITAN AREA	TOTAL RETAIL SALES	FOOD SALES
PHILADELPHIA	$6,899,631,000	$1,561,113,000



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(1) Pa. Liquor Control Board Report #855 for year 1966

. . NOTE THE SALES!

BETHLEHEM - EASTON METROPOLITAN AREA IS
INSYLVANIA METROPOLITAN AREAS*

SELL PENNSYLVANIA'S 3RD MARKET BEST With 2

PITTSBURGH	36,899,631,000	
ALLENTOWN-BETHLEHEM-EASTON	3,465,147,000	$1,561,113,000
HARRISBURG	765,090,000	900,674,000
LANCASTER	747,619,000	175,767,000
YORK	484,291,000	147,454,000
WILKES-BARRE - HAZLETON	467,559,000	97,601,000
READING	450,966,000	98,994,000
ERIE	434,263,000	118,629,000
JOHNSTOWN	386,343,000	94,925,000
SCRANTON	322,988,000	92,978,000
ALTOONA	318,414,000	87,128,000
	196,930,000	79,294,000
		49,974,000

* Sales Management Survey of Buying Power, June 10, 1967

For further information contact our representatives STORY & KELLY-SMITH INC.

STORY & KELLY - SMITH, INC. OFFICES and PHONE NUMBERS:

PHILADELPHIA	A.C. 215-PE5-8017	SYRACUSE	315-478-4154	CLEVELAND	216-621-2268
ATLANTA	A.C. 404-875-0966	BUFFALO	716-634-8440	CINCINNATI	513-621-7[illegible]
BOSTON	A.C. 617-482-2763	CHICAGO	312-782-0174	LOS ANGELES	213-466-[illegible]
MIAMI	A.C. 305-373-0015	DETROIT	313-875-2227	SAN FRANCISCO	415-986-62[illegible]
		MIAMI	305-373-0015		

	$ SALES
	$1,561,113,000
	900,674,000
	175,767,000
	147,454,000
	97,601,000
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Power, June 10, 1967

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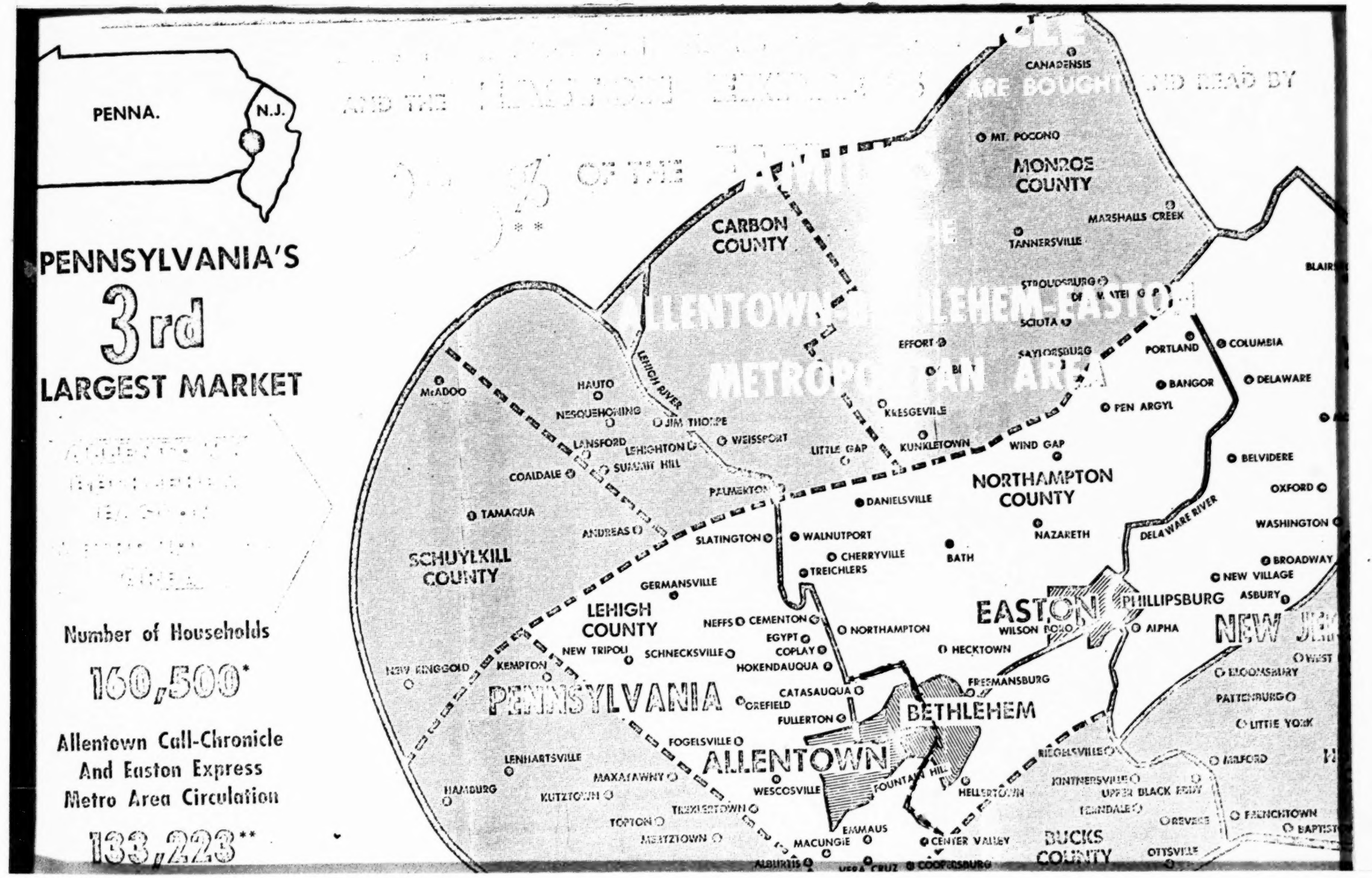
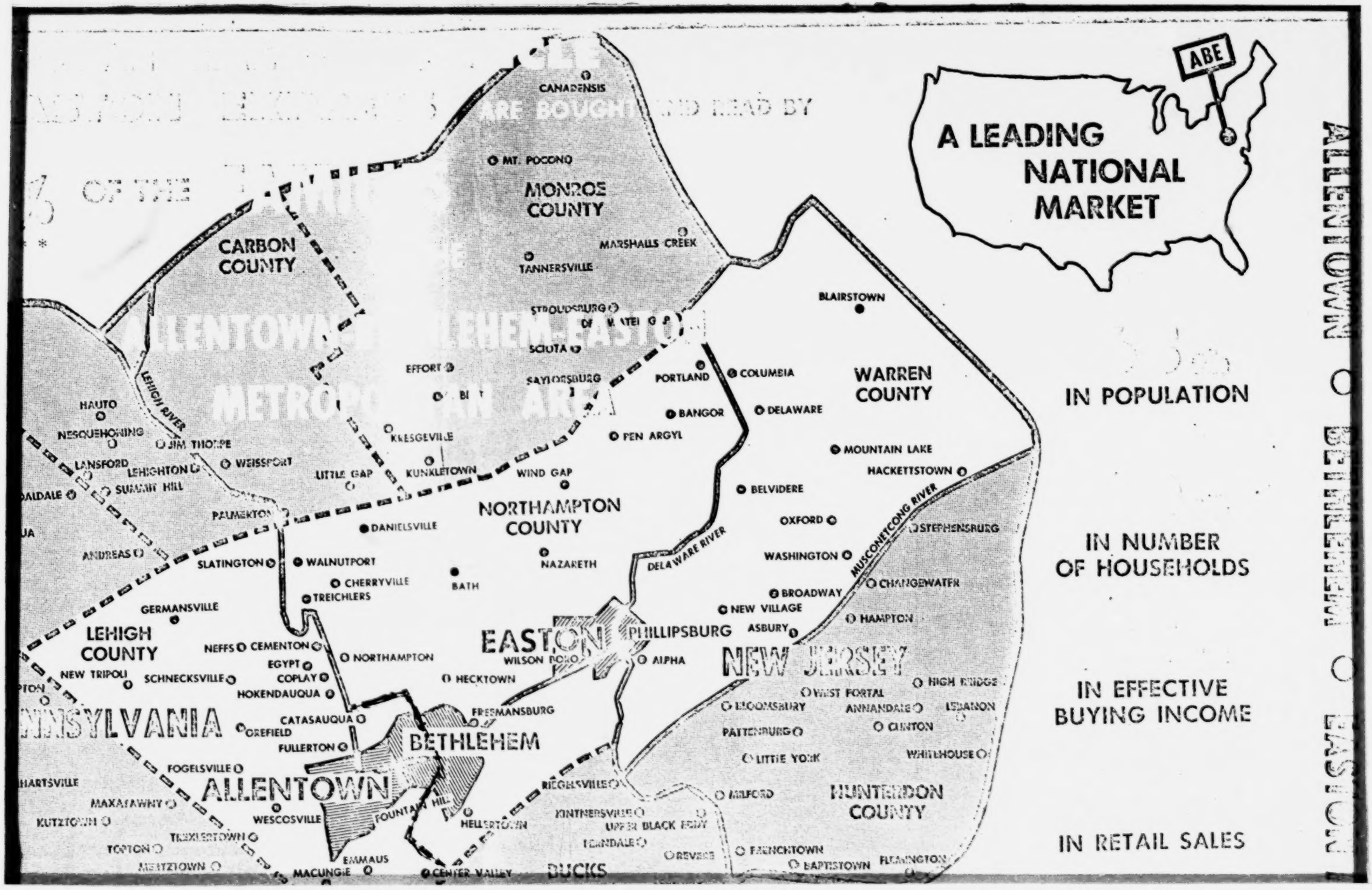
CINCINNATI 513-621-7[illegible]
LOS ANGELES 213-46[illegible]
SAN FRANCISCO 415-98[illegible]

Covering The

ALLENTOWN ○ BETHLEHEM ○ EA

METROPOLITAN AREA


PENNA.
N.J.
PENNSYLVANIA'S
3rd
LARGEST MARKET
Number of Households
160,500*
Allentown Call-Chronicle
And Easton Express
Metro Area Circulation
133,223**
CANADENSIS
MT. POCONO
MONROE
COUNTY
MARSHALLS CREEK
TANNERSVILLE
CARBON
COUNTY
STROUDSBURG
SCIOTA
EFFORT
SAYLORSBURG
PORTLAND
COLUMBIA
BANGOR
DELAWARE
PEN ARGYL
BELVIDERE
OXFORD
WASHINGTON
BROADWAY
NEW VILLAGE
ASBURY
PHILLIPSBURG
ALPHA
HAUTO
McADOO
NESQUEHONING
JIM THORPE
LEHIGH RIVER
LANSFORD
LEHIGHTON
WEISSPORT
COALDALE
SUMMIT HILL
KRESGEVILLE
LITTLE GAP
KUNKLETOWN
WIND GAP
PALMERTON
DANIELSVILLE
NORTHAMPTON
COUNTY
NAZARETH
DELAWARE RIVER
TAMAQUA
ANDREAS
SLATINGTON
WALNUTPORT
CHERRYVILLE
TREICHLERS
BATH
SCHUYLKILL
COUNTY
GERMANSVILLE
LEHIGH
COUNTY
NEFFS
CEMENTON
EGYPT
COPLAY
NORTHAMPTON
EASTON
WILSON BORO
NEW TRIPOLI
SCHNECKSVILLE
HOKENDAUQUA
HECKTOWN
NEW RINGGOLD
KEMPTON
PENNSYLVANIA
CATASAUQUA
FRESMANSBURG
GREFIELD
FULLERTON
BETHLEHEM
MOOSMSBURY
PATTENBURG
LITTLE YORK
FOGELSVILLE
ALLENTOWN
RIEGELSVILLE
MILFORD
LENHARTSVILLE
MAXATAWNY
HAMBURG
KUTZTOWN
WESCOSVILLE
FOUNTAIN HILL
HELLERTOWN
KINTNERSVILLE
UPPER BLACK EDDY
TREXLERTOWN
TOPTON
MEATZTOWN
EMMAUS
MACUNGIE
CENTER VALLEY
BUCKS
COUNTY
REVERE
FRENCHTOWN
OTTSVILLE
ALBURTIS
COOPERSBURG


A LEADING NATIONAL MARKET
ABE
IN POPULATION
IN NUMBER OF HOUSEHOLDS
IN EFFECTIVE BUYING INCOME
IN RETAIL SALES
ALLENTOWN • BETHLEHEM • EASTON
CANADENSIS
MT. POCONO
MONROE COUNTY
MARSHALLS CREEK
TANNERSVILLE
CARBON COUNTY
STROUDSBURG
SCIOTA
EFFORT
SAYLORSBURG
PORTLAND
COLUMBIA
BLAIRSTOWN
WARREN COUNTY
BANGOR
DELAWARE
PEN ARGYL
MOUNTAIN LAKE
HACKETTSTOWN
HAUTO
NESQUEHONING
JIM THORPE
LANSFORD
LEHIGHTON
WEISSPORT
SUMMIT HILL
LEHIGH RIVER
KRESGEVILLE
LITTLE GAP
KUNKLETOWN
WIND GAP
BELVIDERE
OXFORD
STEPHENSBURG
PALMERTON
DANIELSVILLE
NORTHAMPTON COUNTY
NAZARETH
DELAWARE RIVER
MUSCONETCONG RIVER
WASHINGTON
ANDREAS
SLATINGTON
WALNUTPORT
CHERRYVILLE
TREICHLERS
BATH
BROADWAY
CHANGEWATER
NEW VILLAGE
HAMPTON
GERMANSVILLE
LEHIGH COUNTY
NEFFS
CEMENTON
EGYPT
COPLAY
NORTHAMPTON
EASTON
WILSON BORO
PHILLIPSBURG
ASBURY
ALPHA
NEW JERSEY
NEW TRIPOLI
SCHNECKSVILLE
HECKTOWN
HOKENDAUQUA
CATASAUQUA
FRESMANSBURG
OREFIELD
FULLERTON
BETHLEHEM
WEST PORTAL
HIGH BRIDGE
BLOOMSBURG
ANNANDALE
LEBANON
PATTENBURG
CLINTON
LITTLE YORK
WHITEHOUSE
FOGELSVILLE
ALLENTOWN
RIEGELSVILLE
MILFORD
HUNTERDON COUNTY
MAXATAWNY
KUTZTOWN
WESCOSVILLE
FOUNTAIN HILL
HELLERTOWN
KINTNERSVILLE
UPPER BLACK EDDY
TRUMBAUERSVILLE
TOPTON
EMMAUS
MACUNGIE
CENTER VALLEY
BUCKS
FRENCHTOWN
BAPTISTOWN
FLEMINGTON

Total Circulation of the Allentown Call-Chronicle And Easton Express

160,537

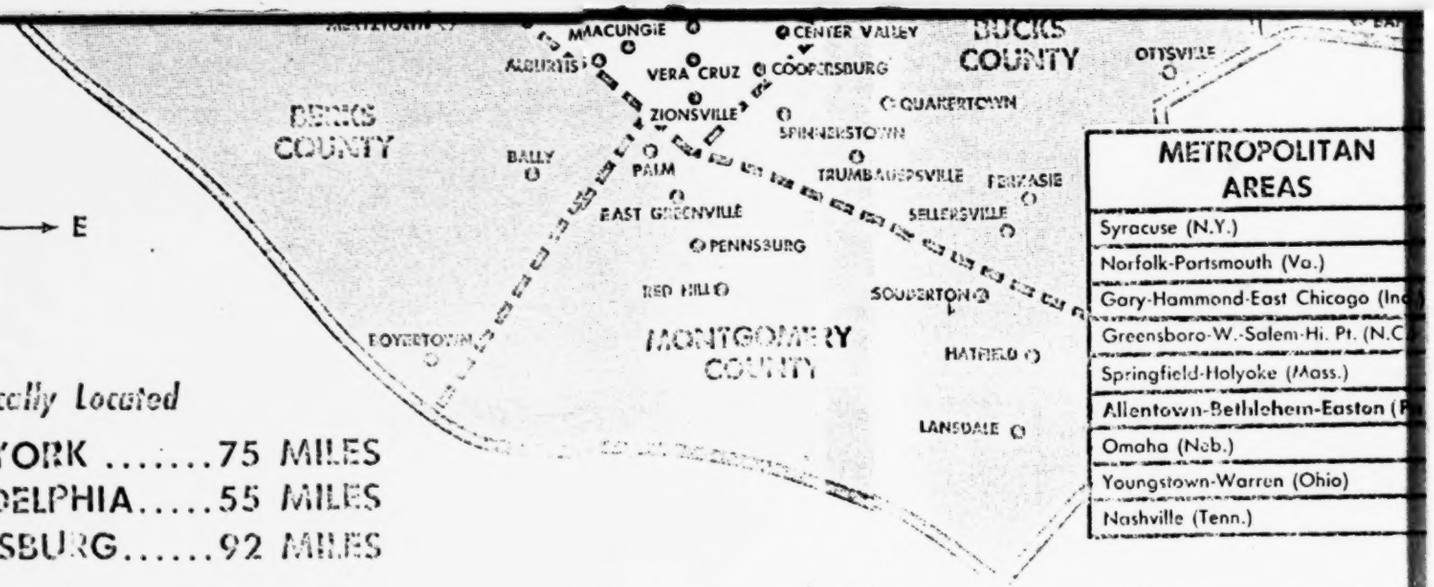
THRUOUT THIS 10 COUNTY AREA

* Source: Sales Monagement Survey Of Buying Power, June 10, 1967

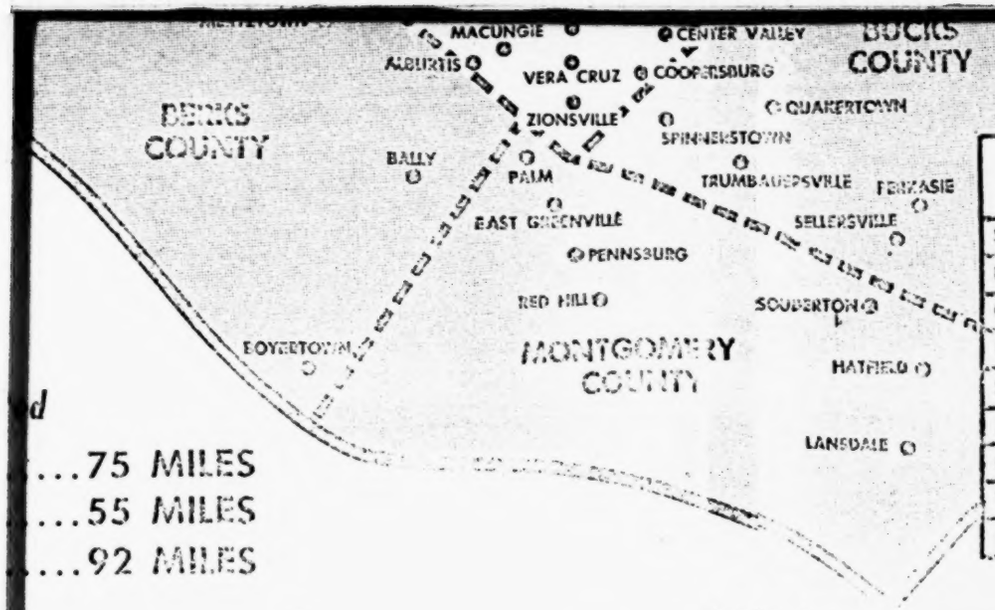
** Source: American Newspaper Markets '67

Strategically Located

NEW YORK .....75 MILES
PHILADELPHIA.....55 MILES
HARRISBURG.....92 MILES



METROPOLITAN AREAS
Syracuse (N.Y.)
Norfolk-Portsmouth (Va.)
Gary-Hammond-East Chicago (In
Greensboro-W.-Salem-Hi. Pt. (N.C
Springfield-Holyoke (Mass.)
Allentown-Bethlehem-Easton (P
Omaha (Neb.)
Youngstown-Warren (Ohio)
Nashville (Tenn.)

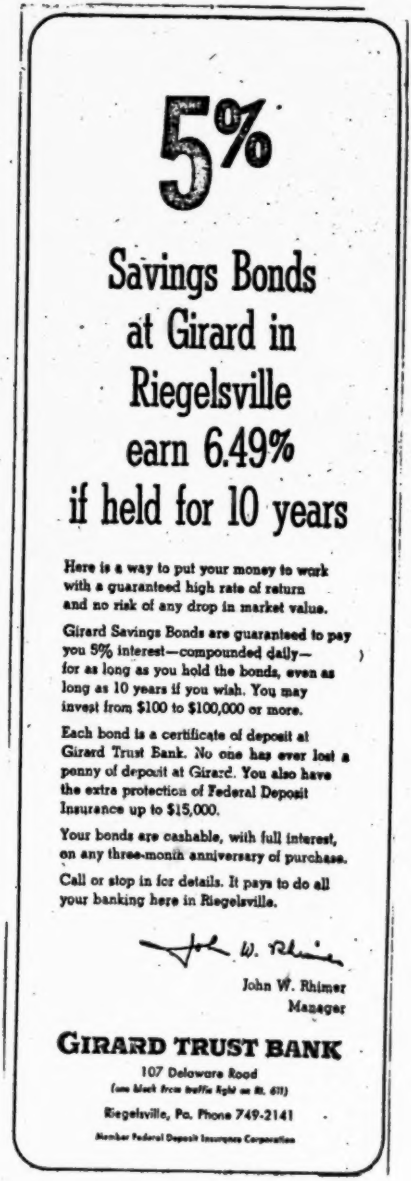


...75 MILES
...55 MILES
...92 MILES

Reprinted from Sales Management Survey of Buying Power June 10, 1967

METROPOLITAN AREAS	HOUSE-HOLDS	RANK	METROPOLITAN AREAS	HOUSE-HOLDS	RANK
Syracuse (N.Y.)	181.900	55	Jacksonville (Fla.)	149.500	64
Norfolk-Portsmouth (Va.)	181.000	56	Fort Lauderdale-Hollywood (Fla.)	148.700	65
Gary-Hammond-East Chicago (Ind.)	173.500	57	Salt Lake City (Utah)	147.600	66
Greensboro-W.-Salem-Hi. Pt. (N.C.)	167.000	58	Grand Rapids (Mich.)	147.600	67
Springfield-Holyoke (Mass.)	164.900	59	Tulsa (Okla.)	145.[illegible]	68
Allentown-Bethlehem-Easton (Pa.)	160.500	60	Richmond (Va.)	145.[illegible]	69
Omaha (Neb.)	157.600	61	Honolulu (Hawaii)	142.600	70
Youngstown-Warren (Ohio)	153.900	62	Wilmington (Del.)	139.[illegible]	71
Nashville (Tenn.)	151.700	63	Flint (Mich.)	134.[illegible]	72

DX 14


5%
Savings Bonds
at Girard in
Riegelsville
earn 6.49%
if held for 10 years
Here is a way to put your money to work with a guaranteed high rate of return and no risk of any drop in market value.
Girard Savings Bonds are guaranteed to pay you 5% interest—compounded daily—for as long as you hold the bonds, even as long as 10 years if you wish. You may invest from $100 to $100,000 or more.
Each bond is a certificate of deposit at Girard Trust Bank. No one has ever lost a penny of deposit at Girard. You also have the extra protection of Federal Deposit Insurance up to $15,000.
Your bonds are cashable, with full interest, on any three-month anniversary of purchase.
Call or stop in for details. It pays to do all your banking here in Riegelsville.
John W. Rhimer
Manager
GIRARD TRUST BANK
107 Delaware Road
(one block from traffic light on Rt. 611)
Riegelsville, Pa. Phone 749-2141
Member Federal Deposit Insurance Corporation

DX 15

1960 POPULATION BY MUNICIPALITIES*

WARREN COUNTY, NEW JERSEY

Allamuchy Twp.	973
Alpha Boro	2,406
Belvidere Town	2,636
Blairstown Twp.	1,797
Franklin Twp.	1,729
Frelinghuysen Twp.	845
Greenwich Twp.	1,397
Hackettstown Town	5,276
Hardwick Twp.	370
Harmony Twp.	2,039
Hope Twp.	833
Independence Twp.	1,509
Knowlton Twp.	1,442
Liberty Twp.	760
Lopatcong Twp.	2,703
Mansfield Twp.	2,130
Oxford Twp.	1,657
Pahaquarry Twp.	63
Phillipsburg Town	18,502
Pohatcong Twp.	3,543
Washington Boro	5,723
Washington Twp.	3,055
White Twp.	1,892

HUNTERDON COUNTY, NEW JERSEY

Alexandria Twp.	1,629
Bethlehem Twp.	1,090
Bloomsbury Boro	838
Clinton Town	1,158
Clinton Twp.	3,770
Flemington Boro	3,232
Franklin Twp.	1,777
Frenchtown Boro	1,340
Glen Gardner Boro	787
Hampton Boro	1,135
High Bridge Boro	2,148
Holland Twp.	2,495

---

*United States Bureau of the Census

Kingwood Twp.	1,841
Lebanon Boro	880
Milford Boro	1,114
Raritan Twp.	4,545
Union Twp.	1,717

NORTHAMPTON COUNTY, PENNSYLVANIA

Allen Twp.	1,183
Bangor Boro	5,766
Bath Boro	1,736
Bethlehem	55,325
Bethlehem Twp.	6,439
Bushkill Twp.	2,676
Chapman Boro	237
East Allen Twp.	1,538
East Bangor Boro	970
Easton	31,955
Forks Twp.	3,249
Freemansburg Boro	1,652
Glendon Boro	555
Hanover Twp.	1,932
Hellertown Boro	6,716
Lehigh Twp.	4,411
Lower Mt. Bethel Twp.	2,307
Lower Nazareth Twp.	1,729
Lower Saucon Twp.	5,536
Moore Twp.	3,373
Nazareth Boro	6,209
Northampton Boro	8,866
North Catasauqua Boro	2,805
Palmer Twp.	8,823
Pen Argyl	3,693
Plainfield Twp.	3,614
Portland Boro	589
Roseto Boro	1,630
Stockertown Boro	777
Tatamy Boro	762
Upper Mt. Bethel Twp.	2,944
Upper Nazareth Twp.	2,661
Walnutport Boro	1,609
Washington Twp.	2,699
West Easton Boro	1,228
Williams Twp.	2,823
Wilson Boro	8,465
Wind Gap Boro	1,930

LEHIGH COUNTY, PENNSYLVANIA

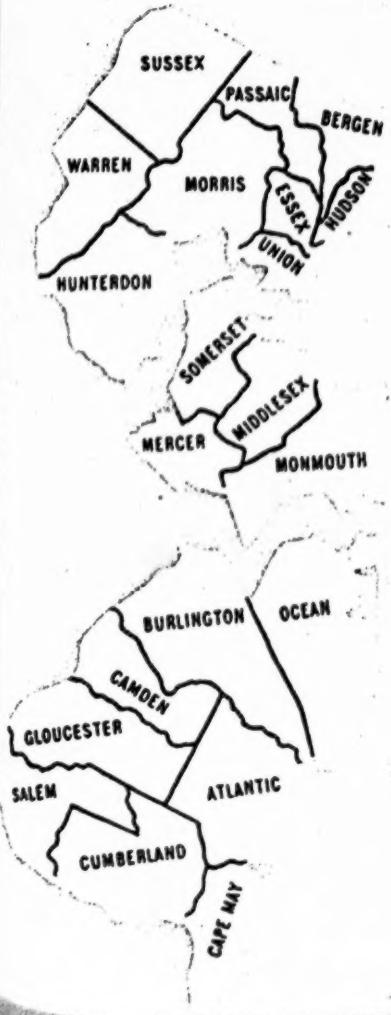
Allentown (City)	108,347-
Alburtis	1,086-
Catasauqua	5,062-
Coopersburg	1,800-
Coplay	3,701-
Emmaus	10,262-
Fountain Hill	5,428-
Macungie	1,266-
Slatington	4,316-
Hanover Twp.	1,083-
Heidelberg Twp.	1,281-
Lower Macungie Twp.	3,859-
Lower Milford Twp.	1,779-
Lowhill Twp.	718-
Lynn Twp.	1,908-
North Whitehall Twp.	5,061-
Salisbury Twp.	7,294-
South Whitehall Twp.	10,032-
Upper Macungie Twp.	3,605-
Upper Milford Twp.	3,614-
Upper Saucon Twp.	5,926-
Washington Twp.	3,199-
Weisenberg Twp.	1,398-
Whitehall Twp.	14,528-
West Bethlehem	20,083-

BUCKS COUNTY, PENNSYLVANIA

Bridgeton Twp.	948-
Durham Twp.	735-
Haycock Twp.	1,273-
Nockamixon Twp.	1,785-
Riegelsville Boro	953-
Springfield Twp.	3,085-

DX 16

MORTGAGE PORTFOLIO
By Counties



NORTHERN COUNTIES

Bergen	$ 67,698,752.58
Essex	128,356,728.24
Hudson	20,369,438.75
Hunterdon	2,228,006.11
Morris	32,232,514.89
Passaic	24,125,470.66
Sussex	2,663,834.79
Union	53,071,401.74
Warren	2,014,566.52
Total	$332,560,714.26

CENTRAL COUNTIES

Mercer	$ 17,002,979.71
Middlesex	54,209,714.54
Monmouth	40,204,557.03
Somerset	15,468,619.13
Total	$126,885,870.41

SOUTHERN COUNTIES

Atlantic	$ 22,818,972.61
Burlington	18,620,600.19
Camden	21,533,533.10
Cape May	9,773,838.45
Cumberland	12,326,843.14
Gloucester	10,599,828.18
Ocean	25,532,022.45
Salem	1,367,059.66
Total	$122,572,697.78
Grand Total	$582,019,282.45

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GEOGRAPHIC DISTRIBUTION OF SHAREOWNERS OF PUBLIC CORPORATIONS

State	Number of Shareowners (thousands)				Per Cent Increase
	1956	1959	1962	1965	1956 to 1965
Alabama	30	87	114	172	+473%
Alaska	n.a.	3	5	9	n.a.
Arizona	33	62	95	179	+442
Arkansas	17	50	58	94	+453
California	1,011	1,480	2,037	2,540	+151
Colorado	75	112	157	240	+220
Connecticut	219	300	459	505	+131
Delaware	37	50	75	79	+114
Dist. of Columbia	57	112	126	121	+112
Florida	172	312	522	704	+309
Georgia	65	137	170	243	+274
Hawaii	n.a.	13	18	39	n.a.
Idaho	10	26	33	43	+330
Illinois	732	874	1,157	1,308	+ 79
Indiana	117	237	374	382	+226
Iowa	78	125	187	282	+159
Kansas	54	112	157	221	+309
Kentucky	53	100	124	161	+204
Louisiana	64	100	151	149	+133
Maine	56	75	94	123	+120
Maryland	144	237	367	424	+194
Massachusetts	531	512	681	805	+ 52
Michigan	370	625	794	946	+155
Minnesota	110	175	255	260	+136
Mississippi	15	38	61	92	+513
Missouri	178	325	488	501	+181
Montana	29	37	59	61	+110
Nebraska	36	50	90	99	+175
Nevada	11	13	23	42	+282
New Hampshire	59	50	75	101	+ 71
New Jersey	554	625	902	1,086	+ 96
New Mexico	10	37	46	60	+500
New York	1,699	1,903	2,341	2,407	+ 42
North Carolina	50	125	238	322	+544
North Dakota	11	12	34	30	+173
Ohio	317	587	791	865	+173
Oklahoma	51	100	134	181	+255
Oregon	54	100	152	200	+270
Pennsylvania	671	1,024	1,378	1,408	+110
Rhode Island	84	75	99	122	+ 45
South Carolina	19	63	71	117	+516
South Dakota	18	25	38	40	+122
Tennessee	57	100	134	201	+253
Texas	160	375	517	744	+365
Utah	23	37	50	78	+239
Vermont	29	37	55	72	+148
Virginia	120	250	302	422	+252
Washington	77	149	202	262	+240
West Virginia	58	100	102	100	+ 72
Wisconsin	167	212	323	360	+116
Wyoming	12	26	30	41	+242
U. S. Terr. & Poss.	8	3	5	14	+ 75
Foreign Countries – U. S. Citizens Living Abroad	18	96	138	143	+694
Total	8,630	12,490	17,010	20,120	+133

n.a. not available.

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Mortgage and Securities Markets

TABLE 64

Percentage Distribution of Mortgage Holdings of Main Types of Financial Institutions, by Type of Loan and Property, December 31, 1967

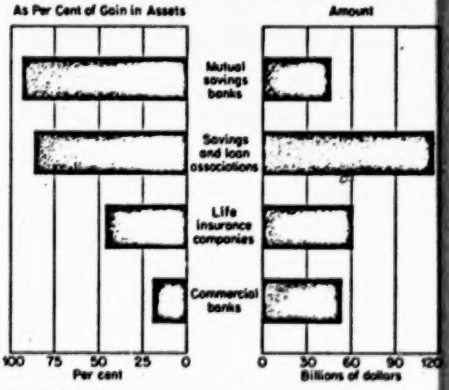
(In per cent)

	Mutual savings banks	Commercial banks	Savings and loan associations	Life insurance companies
Type of loan				
FHA	30.5	12.5	4.8	18.0
VA	23.9	4.2	5.2	9.0
Conventional and other	45.6	83.3	90.0	73.0
TOTAL	100.0	100.0	100.0	100.0
Type of property				
Residential	88.8	63.2	92.5	60.3
1- to 4-family	66.6	59.3	84.7	44.4
Multifamily	22.2	3.9	7.8	15.9
Nonresidential	11.1	31.0	7.6	31.4
Farm	.1	5.8	—	8.2
TOTAL	100.0	100.0	100.0	100.0

SOURCE: Board of Governors of the Federal Reserve System, Federal Home Loan Bank Board, Institute of Life Insurance, and National Association of Mutual Savings Banks.

CHART 14

Net Increase in Mortgage Loans Held by Main Types of Financial Institutions, 1946-1967



NOTE: Data represent increases since December 31, 1945.

SOURCE: Board of Governors of the Federal Reserve System, Federal Home Loan Bank Board, Institute of Life Insurance, and National Association of Mutual Savings Banks.

TABLE 65

Net Flow of Mortgage Funds, by Type of Holder, 1947-1967

	In millions of dollars						Percentage distribution					
	Total	Mutual savings banks	Commercial banks	Savings and loan associations	Life insurance companies	All other holders	Total	Mutual savings banks	Commercial banks	Savings and loan associations	Life insurance companies	All other holders
	7,159	415	2,212	1,715	1,520	1,297	100.0	5.8	30.9	24.0	21.2	18.1
	7,280	950	1,451	1,449	2,158	1,272	100.0	13.0	19.9	19.9	29.6	17.5
	6,480	899	747	1,311	2,073	1,450	100.0	13.9	11.5	20.2	32.0	22.4
	10,140	1,556	2,020	2,041	3,196	1,327	100.0	15.3	19.9	20.1	31.5	13.1
	9,488	1,655	1,068	1,907	3,212	1,646	100.0	17.4	11.3	20.1	33.9	17.3
	9,119	1,463	1,135	2,832	1,937	1,752	100.0	16.0	12.4	31.1	21.2	19.2
	9,908	1,564	983	3,566	2,071	1,724	100.0	15.8	9.9	36.0	20.9	17.4
	12,467	2,064	1,723	4,232	2,654	1,794	100.0	16.6	13.8	33.9	21.3	14.4
	16,189	2,450	2,431	5,267	3,469	2,572	100.0	15.1	15.0	32.5	21.4	15.9
	14,649	2,289	1,715	4,268	3,544	2,833	100.0	15.6	11.7	29.1	24.2	19.4
	11,900	1,423	618	4,278	2,247	3,297	100.0	12.0	5.2	36.1	18.9	27.8
	15,300	2,094	2,186	5,620	1,826	3,574	100.0	13.7	14.3	36.7	11.9	23.4
	19,000	1,729	2,622	7,514	2,135	5,000	100.0	9.1	13.8	39.5	11.2	26.3
	16,000	1,943	661	6,929	2,574	3,893	100.0	12.1	4.1	43.3	16.1	24.3
	19,500	2,210	1,636	8,764	2,432	4,458	100.0	11.3	8.4	44.9	12.5	22.9
	22,300	3,175	4,034	9,936	2,699	2,456	100.0	14.2	18.1	44.6	12.1	11.0
	25,700	3,904	4,938	12,174	3,642	1,042	100.0	15.2	19.2	47.4	14.2	4.1
	26,000	4,332	4,562	10,389	4,608	2,109	100.0	16.7	17.5	40.0	17.7	8.1
	25,800	4,061	5,699	8,973	4,861	2,206	100.0	15.7	22.1	34.8	18.8	8.6
	21,100	2,720	4,705	4,141	4,596	4,938	100.0	12.9	22.3	19.6	21.8	23.4
p	21,700	3,058	3,850	7,446	2,934	4,412	100.0	14.1	17.7	34.3	13.5	20.3

p Preliminary.

SOURCE: Board of Governors of the Federal Reserve System and National Bureau of Economic Research.

Source: Mutual Savings Banking, National Fact Book, May 1968

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TABLE 1 UNITED STATES* 1966 Statistics of the Credit Union Movement

All data as of Dec. 31, 1966 projected on basis of reports union leagues and supervisory the number of credit unions each category is available Research Dept., Madison, W

State or Territory	No. of Active Credit Unions	No. Reporting	Per Cent Reporting	Number of Members	Shares & Deposits (Savings)	Loans Outstanding to Members	Reserves	Assets	
Alabama	339	313	92.3%	256,586	$ 153,926,092	$ 142,323,497	$ 9,905,948	$ 178,515,365	
Alaska	37	37	100.0	42,178	21,338,775	20,389,054	1,280,328	27,290,997	
Arizona	153	153	100.0	145,792	83,386,543	80,311,435	4,693,130	94,293,048	
Arkansas	148	128	86.5	66,364	29,475,982	28,071,687	1,827,893	34,202,404	
California	1,801	1,628	90.4	2,279,721	1,285,900,213	1,282,771,135	82,981,561	1,497,085,344	
Canal Zone	7	6	85.7	9,860	5,172,052	3,207,990	435,858	5,867,338	
Colorado	320	320	100.0	264,372	162,209,638	154,351,489	9,542,454	189,815,815	
Connecticut	498	399	80.1	363,152	236,782,187	171,762,466	14,004,551	267,421,513	4
Delaware	67	48	71.6	44,119	21,681,274	20,040,822	1,102,245	24,635,365	
Dist. of Columbia	171	121	70.8	382,786	191,311,574	176,528,407	13,592,687	217,399,516	
Florida	621	508	81.8	512,763	275,320,188	248,183,167	20,768,462	312,303,514	
Georgia	388	277	71.4	293,471	160,887,563	146,194,618	7,512,328	180,772,543	5
Hawaii	187	167	100.0	167,470	123,542,650	95,406,633	9,127,687	139,995,759	4
Idaho	178	178	100.0	66,533	31,294,158	31,743,084	1,932,928	37,424,182	
Illinois	1,782	1,714	96.2	1,194,516	614,997,865	502,242,342	43,247,624	673,620,394	
Indiana	582	430	73.9	422,868	275,871,355	212,308,624	18,344,614	310,831,479	
Iowa	402	397	100.0	221,570	133,695,428	110,156,848	8,489,376	149,780,001	
Kansas	304	288	94.7	200,726	118,544,888	110,711,194	7,368,520	135,855,585	4
Kentucky	255	196	76.9	137,632	59,046,036	54,905,279	4,745,188	72,333,946	
Louisiana	456	195	42.8	236,162	127,565,144	106,035,971	9,550,202	145,611,805	
Maine	179	167	93.3	128,285	66,891,253	58,714,803	4,072,245	77,792,959	
Maryland	215	145	67.4	228,737	101,123,488	104,710,289	7,298,901	123,330,424	
Massachusetts	765	765	100.0	682,746	410,607,588	340,249,470	34,744,747	467,199,949	3
Michigan	1,195	1,065	89.1	1,396,125	912,888,083	846,860,167	52,679,664	1,048,125,053	
Minnesota	465	387	83.2	354,705	237,805,377	219,315,521	15,448,817	272,723,974	4
Mississippi	175	128	73.1	94,643	44,287,199	40,657,295	3,089,954	50,104,579	
Missouri	566	529	93.5	402,856	213,607,530	195,889,590	13,590,305	243,901,732	4
Montana	132	120	90.9	64,156	29,885,243	28,815,104	1,937,689	33,811,954	
Nebraska	161	132	82.0	109,407	65,249,240	54,106,295	4,532,955	71,702,461	4
Nevada	67	53	79.1	47,401	27,145,569	27,609,596	1,615,161	33,144,773	
New Hampshire	65	65	100.0	47,037	25,805,614	21,545,156	1,978,856	32,029,078	
New Jersey	558	467	84.0	347,355	173,861,500	123,958,991	14,025,410	198,184,530	3
New Mexico	131	97	74.0	93,148	57,296,705	52,358,618	3,356,655	66,482,797	
New York	1,151	753	65.4	890,088	444,519,604	390,915,985	35,576,747	464,363,812	
North Carolina	272	253	93.0	201,253	87,400,482	79,997,899	5,461,059	98,426,478	
North Dakota	130	104	80.0	54,132	28,773,310	28,804,323	1,465,643	32,826,398	3
Ohio	1,343	1,179	87.8	952,710	546,829,924	462,134,396	35,719,744	622,783,605	
Oklahoma	182	168	92.3	175,849	106,877,145	101,582,088	8,007,808	121,504,816	4
Oregon	242	242	100.0	190,359	114,317,647	105,125,421	8,422,186	134,201,228	
Pennsylvania	1,328	1,328	100.0	797,606	386,825,981	314,783,627	30,013,786	453,552,587	3
Puerto Rico	374	114	30.5	131,458	56,184,509	58,533,021	2,834,990	66,263,489	
Rhode Island	146	121	82.9	165,372	110,993,143	102,141,795	8,559,391	130,423,692	4
South Carolina	152	148	97.4	129,641	54,528,471	53,115,020	2,868,211	63,506,978	4

Source: International Credit Union Yearbook, 1967

¢ Not available

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DISTANCE AND DIRECTION FROM PHILLIPSBURG OF SELECTED CITIES WITHIN THE TRADING AREA BY LINEAR MILES.

Warren County, New Jersey	
Belvidere	11-1/2 Mi. NE
Washington	12 Mi. NE
Blairstown	24-1/2 Mi. NE
Hackettstown	23 Mi. NE
Hunterdon County, New Jersey	
Bloomsbury	7 Mi. SE
Clinton	15-1/2 Mi. E
Flemington	22-1/2 Mi. SE
Milford	10-1/2 Mi. S
Lehigh County, Pennsylvania	
Allentown	16 Mi. W
Coopersburg	21 Mi. SW
Slatington	22 Mi. W
Northampton County, Pennsylvania	
Bethlehem	11 Mi. W
Bangor	12-1/2 Mi. N
Nazareth	6-1/2 Mi. NW
Pen Argyl	12 Mi. N
Easton	1/10 Mi. W
Bucks County, Pennsylvania	
Riegelsville	7 Mi. S

Riegel Paper Co. DX-36

PENNSYLVANIA

	SALARIED EMPLOYEES			HOURLY EMPLOYEES
	Bethlehem	1		3
	Bangor	1		
	Durham	1		1
	Easton	38	(2 Flem)	69
	Fullerton	1		1
	Hellertown	2		2
	Martins Creek	1		1
	Nazareth	2		
	Pen Argyl	1		
	Raubsville	1		3
	Riegelsville	24		67
	Springtown	2		10
	Tatamy			1
	Allentown	3		
Coaldale		1		
	Lehighton	1		
	Doylestown	4	(3 Flem)	
	Bedminster			3
	Danboro			1
	Erwinna			12
	Ferndale			11
	Kintnersville	12	(1 Flem)	17
	Lumberville	1		
	New Hope			1
	Ottsville	6	(1 Flem)	10
	Perkasie	2		3
	Pipersville	2		4
	Point Pleasant	2		3
	Revere	2		9
	Sellersville	2		
	Upper Black Eddy	27	(4 Flem)	114
	Broomall	1		
		141		346

NEW JERSEY

SALARIED EMPLOYEES			HOURLY EMPLOYEES	
Montclair, N. J.	1	Flem. employee		
Belvidere, N. J.			1	
Bla[illegible]irstown, N. J.	1			
Col[illegible]mbia, N. J.			2	
Was[illegible]hington, N. J.	3	(1 Flem)	7	[illegible]
Lam[illegible]bertville, N.J.	3	(1 Flem)	5	
Prin[illegible]nceton	1	(NY Sales)		
Ring[illegible]goes			7	
Stoc[illegible]kton	7	(1 Flem)	11	
Tren[illegible]nton	1	(Flem)		
Anna[illegible]ndale	1			
Asbu[illegible]ury & W. Portal	1		9	
Bapt[illegible]ristown	1		4	
Bloo[illegible]msbury, N. J.	23	(incl. R.D.)	69	
Boun[illegible]d Brook	1	(Flem)		
Bros[illegible]dway	1	(Flem)	3	
Clin[illegible]nton	2	(1 Flem)	3	
Edis[illegible]on	1			
Flem[illegible]ington	29	(10 Flem)	28	
Fren[illegible]chtown	36	(5 Flem)	98	
Glen[illegible] Gardner			1	
Hamp[illegible]ton	1		6	
High[illegible], Bridge			3	
Nesh[illegible]anic Saation	1	(Flem)		
Litt[illegible]le York	5		6	
[illegible]				
Milf[illegible]ord	212	(20 Flem)	301	
Ring[illegible]oes	1	(Flem		
Patt[illegible]enburg	1		5	
Phil[illegible]lipsburg & Alpha	43	(2 Flem)	233	
Pitt[illegible]stown	3	(1 Flem	13	
Quak[illegible]ertown	1	(Flem)		
Rieg[illegible]elaville	7		17	
Some[illegible]rville	2	(1 Flem)		
Stev[illegible]artsville	13	(2 Flem	27	
Thre[illegible]e Bridges			1	
	403		860	

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BAKER CHEMICAL EMPLOYEES

Easton	251
Phillipsburg	230
Alpha	15
Belvidere & Washington	23
Milford & Frenchtown	11
Stewartsville	9
Bethlehem & Allentown	20
Bangor, Pen Argyl, Roseta, (North)	35
Riegelsville (South)	8
Miscellaneous - Distant	65
	667

INSTALLMENT LOANS OF PHILLIPSBURG NATIONAL BANK, BY CLASS SIZE, BY LOCATION OF BORROWER, DECEMBER 30, 1967

(Dollar amounts in thousands)

	NUMBER		DOLLAR AMOUNT		NUMBER		DOLLAR AMOUNT	
	No.	Percent	Amount	Percent	No.	Percent	Amount	Percent
	All Class Sizes				$10,001 - $50,000			
Phillipsburg and environs	2,011	59.3%	$1,423.0	50.4%	-	-	-	-
Easton and environs	606	17.9	493.5	17.5	-	-	-	-
Subtotal: Phillipsburg & Easton	2,617	77.2	1,916.5	67.9	-	-	-	-
Outside Areas	772	22.8	905.9	32.1	1	100.0	23.8	100.0
Total	3,389	100.0	2,822.4	100.0	1	100.0	23.8	100.0
	$1 - $2,500				Over $50,000			
Phillipsburg and environs	1,945	60.8%	$1,204.0	55.5%	-	-	-	-
Easton and environs	571	17.9	376.1	17.4	-	-	-	-
Subtotal: Phillipsburg & Easton	2,516	78.7	1,580.1	72.9	-	-	-	-
Outside Areas	681	21.3	587.4	27.1	-	-	-	-
Total	3,197	100.0	2,167.5	100.0	-	-	-	-
	$2,501 - $10,000							
Phillipsburg and environs	66	34.6	219.1	34.7				
Easton and environs	35	18.3	117.4	18.6				
Subtotal: Phillipsburg & Easton	101	52.9	336.5	53.3				
Outside Areas	90	47.1	294.7	46.7				
Total	191	100.0	631.2	100.0				

Note: Detail may not always add to total due to rounding.

Answer to Plaintiff's Interrogatory No. 10.

INSTALLMENT LOANS OF SECOND NATIONAL BANK, BY CLASS SIZE, BY LOCATION OR BORROWER, DECEMBER 30, 1967

(Dollar amounts in thousands)

	NUMBER		DOLLAR AMOUNT		NUMBER		DOLLAR AMOUNT	
	No.	Percent	Amount	Percent	No.	Percent	Amount	Percent
	All Class Sizes				$10,001 - $50,000			
Phillipsburg and environs	785	74.5%	$645.2	73.5%	-	-	-	-
Easton and environs	142	13.5	110.9	12.6	-	-	-	-
Subtotal: Phillipsburg & Easton	927	88.0	756.1	86.2	-	-	-	-
Outside Areas	126	12.0	121.3	13.8	-	-	-	-
Total	1,053	100.0	877.4	100.0	-	-	-	-
	$1 - $2,500				Over $50,000			
Phillipsburg and environs	742	75.0	497.9	74.9	-	-	-	-
Easton and environs	135	13.7	90.1	13.6	-	-	-	-
Subtotal: Phillipsburg & Easton	877	88.7	588.0	88.5	-	-	-	-
Outside Areas	112	11.3	76.5	11.5	-	-	-	-
Total	989	100.0	664.5	100.0	-	-	-	-
	$2,501 - $10,000							
Phillipsburg and environs	43	67.2	147.3	69.2				
Easton and environs	7	10.9	20.8	9.8				
Subtotal: Phillipsburg & Easton	50	78.1	168.1	79.0				
Outside Areas	14	21.9	44.8	21.0				
Total	64	100.0	212.9	100.0				

Note: Detail may not always add to total due to rounding.

Source: Defendant's Answer to Plaintiff's Interrogatory No. 10.

SINGLE PAYMENT LOANS OF PHILLIPSBURG NATIONAL BANK, BY CLASS SIZE, BY LOCATION OF BORROWER, DECEMBER 30, 1967

(Dollar amounts in thousands)

	NUMBER		DOLLAR AMOUNT		NUMBER		DOLLAR AMOUNT	
	No.	Percent	Amount	Percent	No.	Percent	Amount	Percent
	All Class Sizes				$10,001 - $50,000			
Phillipsburg and environs	447	60.9%	$ 615.7	50.9%	5	27.8%	$ 82.0	28.5%
Easton and environs	92	12.5	91.5	7.6	-	-	-	-
Subtotal: Phillipsburg & Easton	539	73.4	707.2	58.5	5	27.8	82.0	28.5
Outside Areas	195	26.6	501.6	41.5	13	72.2	206.2	71.5
Total	734	100.0	1,208.8	100.0	18	100.0	288.2	100.0
	$1 - $2,500				Over $50,000			
Phillipsburg and environs	382	62.3	239.9	61.5	1	50.0	80.0	47.1
Easton and environs	80	13.1	44.5	11.4	-	-	-	-
Subtotal: Phillipsburg & Easton	462	75.4	284.4	72.9	1	50.0	80.0	47.1
Outside Areas	151	24.6	105.5	27.1	1	50.0	90.0	52.9
Total	613	100.0	389.9	100.0	2	100.0	170.0	100.0
	$2,501 - $10,000							
Phillipsburg and environs	59	58.4	213.7	59.2				
Easton and environs	12	11.9	47.0	13.0				
Subtotal: Phillipsburg & Easton	71	70.3	260.7	72.3				
Outside Areas	30	29.7	100.0	27.7				
Total	101	100.0	360.7	100.0				

Note: Detail may not always add to total due to rounding.

Source: Defendant's Answer to Plaintiff's Interrogatory No. 10.

[1527] SINGLE PAYMENT LOANS OF SECOND NATIONAL BANK, BY CLASS SIZE, BY LOCATION OF BORROWER, DECEMBER 30, 1967

(Dollar amounts in thousands)

	NUMBER		DOLLAR AMOUNT		NUMBER		DOLLAR AMOUNT	
	No.	Percent	Amount	Percent	No.	Percent	Amount	Percent
	All Class Sizes				$10,001 - $50,000			
Phillipsburg and environs	123	63.7%	$184.4	57.8%	1	33.3%	$10.3	26.3%
Easton and environs	21	10.9	38.1	11.9	-	-	-	-
Subtotal: Phillipsburg & Easton	144	74.6	222.5	69.7	1	33.3	10.3	26.3
Outside Areas	49	25.4	96.8	30.3	2	66.7	28.9	73.7
Total	193	100.0	319.3	100.0	3	100.0	39.2	100.0
	$1 - $2,500				Over $50,000			
Phillipsburg and environs	107	65.2	$ 95.1	66.1%	-	-	-	-
Easton and environs	16	9.8	13.4	9.3	-	-	-	-
Subtotal: Phillipsburg & Easton	123	75.0	108.5	75.4	-	-	-	-
Outside Areas	41	25.0	35.4	24.6	-	-	-	-
Total	164	100.0	143.9	100.0	-	-	-	-
	$2,501 - $10,000							
Phillipsburg and environs	15	57.7	79.1	58.0				
Easton and environs	5	19.2	24.6	18.0				
Subtotal: Phillipsburg & Easton	20	76.9	103.7	76.1				
Outside Areas	6	23.1	32.6	23.9				
Total	26	100.0	136.3	100.0				

Note: Detail may not always add to total due to rounding.

Source: Defendant's Answer to Plaintiff's Interrogatory No. 10.

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MORTGAGES

Total 3130

Alexandria	1	Tewksbury	1
Ellamsby	1	Bore of Washington	18
Alpha	19	Twp. of Washington	40
Belvidere	21		307
Beth. Twp.	3		
Blairstown Twp.	1		
Bloomsbury	4		
Bridgewater	1		
Califon	1		
Clinton	4		
E. Brunswick	1		
Franklin	3		
Greenwich	9		
Hackettstown	4		
Hampton	2		
Harmony	11		
High Bridge	1		
Holland	19		
Hope	2		
Independence	1		
Knowlton	1		
Lebanon	3		
Liberty	1		
Lopatcong	51		
Mansfield	3		
Milford	1		
Oxford	1		
Phillipsburg	49		
Pohatcong	24		
Readington	5		

LEHIGH		NORTHAMPTON	
Allentown	353	Allen Twp.	1
Bethlehem	58	Bangor	4
Catasauqua	14	Bethlehem	67
Coopersburg	6	Bethlehem Twp.	129
Coplay	3	Bushkill Twp.	2
Emmaus	72	East Allen Twp.	8
Fountain Hill	2	Easton	396
Hanover Twp.	9	Forks Twp.	119
Twp. Lower Macungie	92	Boro Freemansburg	1
Lower Milford Twp.	10	Glendon	3
Lowhill Twp.	3	Hanover Twp.	27
Boro. Macungie	3	Hellertown	14
No. Whitehall Twp.	9	Lehigh Twp.	5
Salisbury Twp.	82	Lower Mt. Bethel Twp.	10
Slatington	1	Lower Nazareth Twp.	4
S. Whitehall Twp.	114	Lower Saucon Twp.	19
Upper Macungie Twp.	10	Moore Twp.	4
Upper Milford Twp.	13	Nazareth	4
Upper Saucon Twp.	49	Boro of Northampton	9
Weisenberg	1	No. Catasauqua	6
Whitehall Twp.	102	Pen Argyl	6
	1006	Plainfield Twp.	13
		Portland	2
		Roseto	2
		Stockertown	2
		Tatamy	4
		Upper Mt. Bethel Twp.	1

LEHIGH

NORTHAMPTON

Upper Nazareth Twp.	9
Walnutport	1
Washington Twp.	5
West Easton	13
Williams Twp.	43
Wilson Boro	185
Wind Gap	6
Palmer	693
	1817

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McGinley Mills
Mailing List

Easton	3621
Allentown	758
Bangor	570
Bethlehem	1340
Nazareth	665
Pen Argyl	210
Raubsville	23
Riegelsville	100
Other XXXO	1880
	9167

Phillipsburg	2352
Alpha	235
Belvidere	355
Blairstown	127
Bloomsbury	163
Clinton	142
Hackettstown	274
Flemington	475
Milford	470
Stewartsville	167
Washington	663
Other	3852
	9276

DX-51

DEFENDANT'S EXHIBIT

9/26/61

Don't let a few miles stand between us.

If you like what we offer . . .

no service charges on checking accounts that maintain $100 balance

4% daily interest on savings accounts, compounded quarterly

5% Investment Savings Bonds

a reputation as "The Lending Bank"

. . . then bank with us by mail.
It's practical.
And (as you can see) it's profitable. We even pay the postage.
In some ways, it's easier to bank by mail than in person.
There's a red, white and blue drive-up window on almost every corner.

The First National Bank of Milford

Member F.D.I.C. ■ Spruce Run Office: Glen Gardner, New Jersey

General Banking Hours: 9-3, Monday thru Thursday; 9-6, Friday
Additional Banking Hours: Milford office open to 5:30 Wednesdays; Milford Drive-In open to 5:30 Mon.-Fri.; Spruce Run office Drive-Up window is open to 5 P.M. Monday thru [illegible]

[1533] DX-54

Yo[illegible] in Philadelphia

DEFENDANT'S EXHIBIT

9/30/68

[illegible] have the nicest figure in town

Sta[illegible] where you are.

F[illegible]eral Savings of Philadelphia has been doing business with pe[illegible] in your area for years . . . the oldest Federal Savings in Pe[illegible]lvania, with assets of over $125 million.

On [illegible] certificates* of $10,000 or more, we pay 5¼% (6 months).

On [illegible]000 certificates* (1 year), we pay 5%.

Eve[illegible] regular passbook savings, we pay 4½%. Start saving with us [illegible] through the mail (we pay postage).

It's [illegible] safe, and you'll get richer a lot faster.

Cl[illegible] coupon below, and we'll show you how easy it is.

*A[illegible]cally renewed unless notice is given.

Mo[illegible] dividend checks available on certificates of $10,000 and more.

[illegible] Federal Savings
1601 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103

I would like ☐ 5¼%, ☐ 5%, ☐ 4½%.

[illegible]eck enclosed in the amount of $_____

☐ Please send additional information.

NAME_____

ADDRESS_____

[illegible]TY_____ STATE_____ ZIP_____

[illegible]

[illegible] J., and the John[illegible] University. He [illegible] degree from [illegible] and is employed [illegible] York City Board

[illegible]WELL-ANDREWS

Mr. and Mrs. George Maxw[illegible] of Glen Gardner, [illegible] J. ha[illegible] the [illegible]ement [illegible]ghter, Barbara J., [illegible] R. Andrews, son [illegible] R. Andrews and the la[illegible] Andrews of Frenchto[illegible] Milford, N. J.

[illegible] Maxwell [illegible] gradua[illegible] Hunterdon Region[illegible] School, A[illegible], and [illegible] as a [illegible]keeper [illegible] Gardner's Ga[illegible] Inc., Gl[illegible] Gardner, N. J.

Her fiance is a graduate [illegible] Delaware Valley Regional Hi[illegible] School, Frenchtown, and in Se[illegible]tember will be a senior at Rid[illegible] College, Trenton. He is al[illegible] employed by S[illegible]dea Pattern[illegible] in Milford.

Give white sauce an ex[illegible] good flavor by cooking a lit[illegible] onion in the butter used in ma[illegible] the sauce. It's especial[illegible] with spinach and ma[illegible] early summer vegetables

REGA[illegible]

NEW S[illegible]

AP[illegible]
ANY T[illegible]
INCLUDING [illegible]
• PULL-IN[illegible]
COMPLET[illegible]

FIRST PAYME[illegible]

Everybody Likes To Endorse Our Checks

This is the safest way to handle money. Nobody has ever lost, stolen, burned or burglarized a checking account. Give yourself or your business the prestige of signing our checks. Everybody you know would like to endorse one.

Hunterdon County National Bank

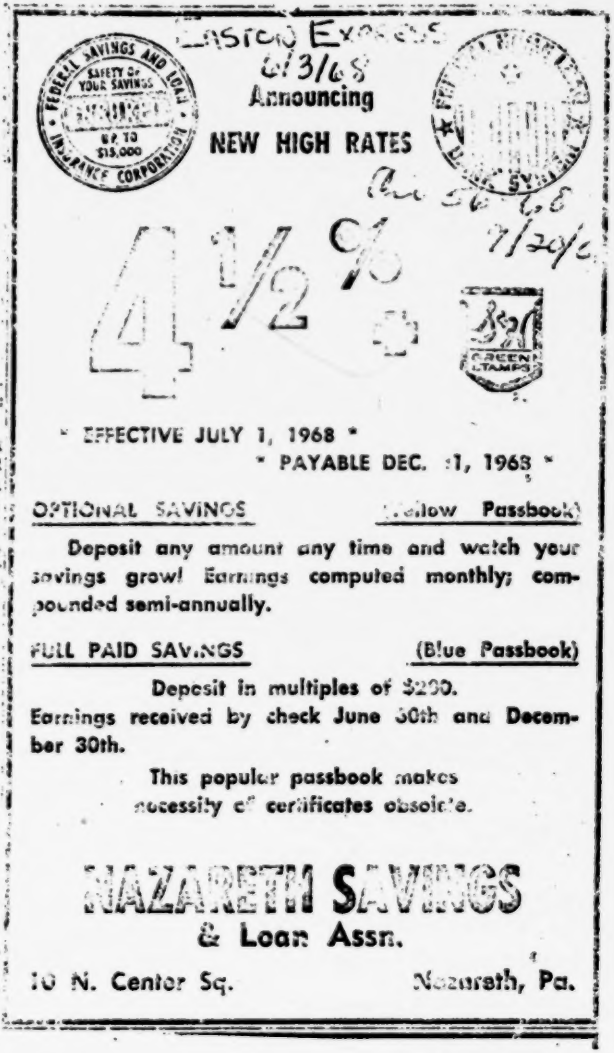
Hunterdon's First Bank Established 1854 *Leads in Resources*

Drive-in or Walk-up Service Until 5 P.M.—8 P.M. Fridays

FLEMINGTON (50 Main Street) • FRENCHTOWN • HIGH BRIDGE • RARITAN 31 (at Flemington)
HOLLAND TOWNSHIP, MILFORD • HUNTERDON SHOPPING CENTER • LAMBERTVILLE
STOCKTON • UNION TOWNSHIP, CLINTON • WHITEHOUSE

MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

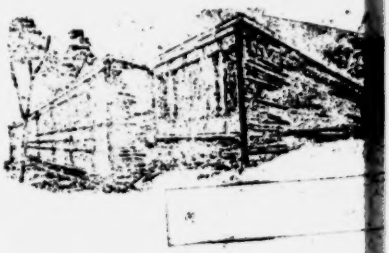
DX-56


Easton Express
6/3/68
Announcing
NEW HIGH RATES
4 1/2 %
7/20/68
FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
SAFETY OF YOUR SAVINGS
UP TO $15,000
GREEN STAMPS
* EFFECTIVE JULY 1, 1968 *
* PAYABLE DEC. 31, 1968 *
OPTIONAL SAVINGS (Yellow Passbook)
Deposit any amount any time and watch your savings grow! Earnings computed monthly; compounded semi-annually.
FULL PAID SAVINGS (Blue Passbook)
Deposit in multiples of $200.
Earnings received by check June 30th and December 30th.
This popular passbook makes necessity of certificates obsolete.
NAZARETH SAVINGS
& Loan Assn.
10 N. Center Sq. Nazareth, Pa.

NEW JERSEY CREDIT UNION LEAGUE
Ward Street - P.O. Box 298
Bigletown, New Jersey 08520
609-586-2475

W.R. Johnson, Managing Director

DX-59



September 11, 1968

Attorney Robert B. Meyner, Esquire
[illegible] Commerce Street
Newark, New Jersey

Dear Governor:

In response to your request for information on the following credit unions:

	Assets	Shares	Loans	Member
Ingersoll-Rand Employees F.C.U.	243,662	237,380	223,063	1125
Nytronics Employees F.C.U.	140,882	131,308	45,585	224
Riegel Employees F.C.U.	898,977	835,198	574,186	1384
Baker Employees F.C.U.	200,197	176,928	179,583	437

The information contained in letter of July 30, 1968 from Micheal J. Judge, Managing Director, Pennsylvania Credit Union League, is hereby clarified.

The communication should have read as follows:

	Northern Bucks County	North Hampton County
Assets	426,105	4,737,154
Loans	194,459	3,472,730
Shares	242,422	5,373,594
Members	1,286	9,781

In telephone conversation with Judge, he informs me that on sufficient copies of statistics were reproduced for official family. Possibly Mrs. Shovics might provide the details you require.

We trust that the information is helpful.

Best wishes.

Very truly yours,

W. R. JOHNSON - MANAGING DIRECTOR

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ONE WAY TRAFFIC FROM PHILLIPSBURG TO ALLENTOWN-BETHLEHEM

	Daily Average 1966
Heavy Trucking	97
Autos and Light Trucks	1,956
TOTAL	2,053

SOURCE: Job 1620, Delaware River Bridge Studies, 1966, by DeLeuw, Cather Organization

IX-1 CONTESTED SECTION 7 BANK MERGER CASES: ASSETS AND MARKET SHARES OF RESULTING BANKS

Case	Assets ($millions)	Percentage of Market
1) Manufacturers Hanover [a/]	6,001.8	14.4
2) Continental Illinois [b/]	3,248.3	21.2
3) Crocker-Citizens [c/]	3,217.4	
4) California Bank--First Western [d/]	2,421.2	
5) Philadelphia National Bank [e/]	1,805.3	35.8
6) Provident--Central Penn [f/]	1,069.1	15.8
7) First City--Southern National (Houston) [g/]	1,042.9	24.6
8) Mercantile Trust--Security Trust [h/]	1,040.4	21.4
9) Third National--Nashville Bank & Trust [i/]	428.2	33.7
10) First National--Cooke Trust Company [j/]	389.7	33
11) Phillipsburg National--Second National [k/]	41.1	3.5

a) 48th Annual Report of the Board of Governors of the Federal Reserve System, 1961, pp. 175-177. Assets for resultant bank are sum of assets for merging banks; market share is percent of New York City banks given in summary of basis for decision.

b) Ninety Ninth Annual Report of the Comptroller of the Currency, 1961, p. 61; Federal Reserve Bulletin, September 1963, p. 1321. Assets for resultant bank as given in Comptroller's Annual Report; market share is percent of deposits of largest bank in Chicago SMSA as of June 30, 1962.

c) Comptroller of the Currency, 101st Annual Report 1963, p. 161. Assets for resultant bank as given in the Comptroller's Annual Report; market is not defined parallel to that for other mergers given.

d) 48th Annual Report of the Board of Governors of the Federal Reserve System, 1961, p. 150. Assets for resultant bank are sum of assets for merging banks; market is not defined parallel to that for other mergers given.

e) United States v. The Philadelphia National Bank, 201 F. Supp. 348 (1962).

f) Assets of resultant bank are the sum of assets for merging banks given in Comptroller's decision; market share is percent of IPC deposits in 4 county area given in Department of Justice's Advisory Opinion.

g) Polk's Bank Directory, September 1966; FDIC, Summary of Deposits and Accounts in All Commercial Banks, FDIC District 11, June 30, 1966. Assets of resultant bank are the sum of assets of merging bank given in Polk's; market share is percent of deposits for all commercial banks in SMSA.

h) The Comptroller of the Currency, Annual Report 1965-1966, pp. 93-102. Assets for resultant bank as given in Comptroller's Annual Report; market share is percent of deposits for all commercial banks of SMSA.

i) The Administrator of National Banks, 102nd Annual Report 1964, pp. 129-132. Assets for resultant bank as given in the (Comptroller's) Annual Report; market share is approximate percent of deposits of 8 counties computed from data given in decision (District Court decision indicates 38 percent for Davidson County).

j) Federal Deposit Insurance Corporation, Annual Report-1966, pp. 45-46. Assets for resultant bank are sum of assets for merging banks; market share is percent of total deposits for commercial banks of Honolulu County given in the Department of Justice's Advisory Opinion.

k) Reports of Condition, December 30, 1967. Assets for resultant bank are sum of assets for merger bank; market share is percent of total deposits for all banks included in the smaller trading area B defined by interventor: Answers of the Intervenor to the Interrogatories Proposed by Plaintiff, p. 2, 1.B. Market share as a percent of total deposits of all banks included in the larger trading area A would be 3.4 percent.

NOTE: The First National--Security Trust (Lexington) case was filed under the Sherman Act. Assets for the resultant bank in that case, as given in the Comptroller's Annual Report, were $81.2 million; market share as a percent of deposits of all commercial banks in SMSA was 52 percent. Ninety-Ninth Annual Report of the Comptroller of the Currency, 1961, pp. 41-42.

PERCENTAGE COMPOSITION OF GROSS LOAN PORTFOLIOS
OF BANKS INVOLVED IN CONTESTED SECTION 7 CASES #

IX-2

"MERGED BANKS"

LOAN CLASSIFICATION	A	B*	C	D	E	F	G	H	I	J	K
GROSS LOANS	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
COMMERCIAL & INDUSTRIAL LOANS	21.6	14.6	38.3	58.8	44.4	39.4	54.3	27.8	58.1	53.5	33.4
REAL ESTATE LOANS	43.0	61.4	4.4	4.2	7.2	10.2	5.7	37.7	3.7	10.3	31.9
LOANS TO INDIVIDUALS	23.7	21.9	36.4	17.8	30.5	27.2	12.3	24.6	9.1	23.0	20.3
AUTO INSTALLMENTS	8.6	5.3	10.3	1.6	17.6	10.0	1.7	10.0	1.4	3.0	9.2
OTHER INSTALLMENTS	7.8	9.3	6.2	.9	5.3	6.3	5.0	8.9	3.8	9.9	5.8
SINGLE PAYMENT	7.3	7.3	19.9	15.3	7.6	10.9	5.6	5.7	3.9	10.1	5.3
LOANS TO FINANCIAL INSTITUTIONS	2.7	.4	13.1	14.5	9.6	11.4	16.3	5.7	13.7	10.4	9.0
LOANS FOR SECURITIES PURCHASES	1.3	.3	3.3	1.8	6.0	7.4	6.7	1.2	7.0	.7	1.2
LOANS TO FARMERS	2.5	.8	.4	0	0	.1	0	2.3	.2	0	3.3
ALL OTHER LOANS	5.2	.6	4.1	2.9	2.3	4.3	4.7	.7	8.2	2.1	.9

Includes all cases in which action brought by the Justice Department was contested by the defendant banks. Loan data are consolidated for the defendant banks in each case and are as of the fourth call date of the year prior to consummation of the completed merger or prior to agency approval of non-consummated mergers.

* "B" represents the composition of the combined loan portfolios of Phillipsburg National Bank and Trust Co. and Second National Bank of Phillipsburg & Bank of Phillipsburg, N.J. (1958).

Source: Division of Statistics
Comptroller of the Currency

CONFIDENTIAL

CODE KEY FOR PAIRS OF BANKS INVOLVED IN CONTESTED SECTION 7 CASES

CODE	BANK NAME AND LOCATION
A	First National Bank of Hawaii, Honolulu, Hawaii* Cooke Trust Co., Honolulu, Hawaii
B	Phillipsburg National Bank & Trust Co., Phillipsburg, N. J. Second National Bank of Phillipsburg, Phillipsburg, N. J.
C	Third National Bank in Nashville, Nashville, Tenn. Nashville Bank & Trust Co., Nashville, Tenn.
D	First City National Bank of Houston, Houston, Texas Southern National Bank of Houston, Houston, Texas
E	Provident N. B., Philadelphia, Pa. Central-Penn National Bank of Philadelphia, Philadelphia, Pa.
F	Mercantile Trust Co. N.A., St. Louis, Mo. Security Trust Co., St. Louis, Mo.
G	Manufacturers Trust Co., New York, New York The Hanover Bank, New York, New York
H	Crocker-Anglo National Bank, San Francisco, Calif. Citizens National Bank, Los Angeles, Calif.
I	Continental Illinois National Bank & Trust Co., Chicago, Ill. City National Bank & Trust Co. of Chicago, Chicago, Ill.
J	Philadelphia National Bank, Philadelphia, Pa. Girard Corn Exchange Trust Co., Philadelphia, Pa.
K	California Bank, Los Angeles, Calif. First Western Bank & Trust Co., San Francisco, Calif.

*The figures in "A" are those for First National Bank of Hawaii alone, since the Cooke Trust Co. had no loan portfolio.

Deposits of Banks Involved in Contested Section 7 Cases, 1960-1967# IX-3

Bank Name and Location**	Date	Deposits* (Dollars) Total	Demand	Time & Savings
Girard Corn Exchange Trust Co., Phila., Pa.	12-31-60	689,492,323	553,056,372	136,435,951
Philadelphia National Bank, Philadelphia, Pa.	12-31-60	1,020,059,675	858,029,644	162,030,031
Resulting Bank		1,709,551,998	1,411,086,016	298,465,982
Provident National Bank, Philadelphia, Pa.	12-31-65	627,461,477	431,126,923	196,334,554
Central-Penn N. B. of Philadelphia, Pa.	12-31-65	333,118,281	221,734,520	111,383,761
Resulting Bank		960,579,758	652,861,443	307,718,315
California Bank, Los Angeles, California	12-31-60	1,215,893,296	854,576,735	361,316,561
First Western Bank & Trust Co., San Francisco, Calif.	12-31-60	1,073,639,772	474,277,654	599,362,118
Resulting Bank		2,289,533,068	1,328,854,389	960,678,679
The Hanover Bank, New York, New York	12-31-60	1,736,446,021	1,590,001,271	146,444,750
Manufacturers Trust Company, New York, New York	12-31-60	3,453,328,618	2,751,658,750	701,669,868
Resulting Bank		5,189,774,639	4,341,660,021	848,114,618
Third National Bank in Nashville, Nashville, Tenn.	12-20-63	304,099,574	196,244,279	107,855,295
Nashville Bank & Trust Co., Nashville, Tenn.	12-20-63	42,085,070	23,960,549	18,124,521
Resulting Bank		346,184,644	220,204,828	125,979,816
Crocker-Anglo Nat'l. Bank, San Francisco, Calif.	12-28-62	2,134,001,968	1,060,230,793	1,073,771,175
Citizens National Bank, Los Angeles, California	12-28-62	713,793,335	391,533,138	322,260,197
Resulting Bank		2,847,795,303	1,451,763,931	1,396,031,372
Continental Illinois N. B. & Tr. Co., Chicago, Ill.	12-31-60	2,481,717,051	2,089,948,595	391,768,456
City N. B. & Trust Co. of Chicago, Chicago, Ill.	12-31-60	391,879,979	342,630,713	49,249,266
Resulting Bank		2,873,597,030	2,432,579,308	441,017,722
First National Bank of Hawaii, Honolulu, Hawaii	12-31-65	336,415,959	184,180,897	152,235,062
Cooke Trust Co., Ltd., Honolulu, Hawaii	12-31-65	-----	-----	-----
Resulting Bank		336,415,959	184,180,897	152,235,062
First City N. B. of Houston, Houston, Texas	12-31-65	911,702,256	663,786,038	247,916,218
Southern N. B. of Houston, Houston, Texas	12-31-65	77,562,389	57,067,685	20,494,704
Resulting Bank		989,264,645	720,853,723	268,410,922

The Hanover Bank, New York, New York	12-31-60	1,736,446,021	1,590,001,271	146,444,750
Manufacturers Trust Company, New York, New York	12-31-60	3,453,328,618	2,751,658,750	701,669,868
Resulting Bank		5,189,774,639	4,341,660,021	848,114,618
Third National Bank in Nashville, Nashville, Tenn.	12-20-63	304,099,574	196,244,279	107,855,295
Nashville Bank & Trust Co., Nashville, Tenn.	12-20-63	42,085,070	23,960,549	18,124,521
Resulting Bank		346,184,644	220,204,828	125,979,816
Crocker-Anglo Nat'l. Bank, San Francisco, Calif.	12-28-62	2,134,001,968	1,060,230,793	1,073,771,175
Citizens National Bank, Los Angeles, California	12-28-62	713,793,335	391,533,138	322,260,197
Resulting Bank		2,847,795,303	1,451,763,931	1,396,031,372
Continental Illinois N. B. & Tr. Co., Chicago, Ill.	12-31-60	2,481,717,051	2,089,948,595	391,768,456
City N. B. & Trust Co. of Chicago, Chicago, Ill.	12-31-60	391,879,979	342,630,713	49,249,266
Resulting Bank		2,873,597,030	2,432,579,308	441,017,722
First National Bank of Hawaii, Honolulu, Hawaii	12-31-65	336,415,959	184,180,897	152,235,062
Cooke Trust Co., Ltd., Honolulu, Hawaii	12-31-65	-----	-----	-----
Resulting Bank		336,415,959	184,180,897	152,235,062
First City N. B. of Houston, Houston, Texas	12-31-65	911,702,256	663,786,038	247,916,218
Southern N. B. of Houston, Houston, Texas	12-31-65	77,562,389	57,067,685	20,494,704
Resulting Bank		989,264,645	720,853,723	268,410,922
Mercantile Trust Co., N. A., St. Louis, Missouri	12-31-64	837,508,856	588,951,253	248,557,603
Security Trust Co., St. Louis, Missouri	12-31-64	116,826,320	70,926,621	45,899,699
Resulting Bank		954,335,176	659,877,874	294,457,302
Phillipsburg N. B. & Tr. Co., Phillipsburg, N. J.	12-30-67	22,357,612	6,541,786	15,815,826
Second National Bank of Phillipsburg, Phillipsburg, N.J.	12-30-67	16,005,216	4,550,472	11,454,744
Resulting Bank		38,362,828	11,092,258	27,270,570

Includes all cases in which action brought by the Justice Department was contested by the defendant banks.
* Data are as of the fourth call date of the year prior to the consummation of completed mergers or prior to agency approval of non-consummated mergers.
** The "resulting bank" figures are simple summations of the given deposit figures.

TABLE E
TOTAL TRUST ASSETS AND ASSETS BY TYPE OF ACCOUNT
-IN ORDER BY TRUST DEPARTMENT SIZE WITHIN SMSA-
(AMOUNTS IN THOUSANDS)

TOTAL TRUST ASSET RANK	BANK NAME CITY, STATE	TOTAL TRUST ASSETS AMOUNT	TOTAL TRUST ASSETS PERCENT OF TOTAL	EMPLOYEE BENEFIT ACCOUNTS AMOUNT	EMPLOYEE BENEFIT ACCOUNTS RANK	EMPLOYEE BENEFIT ACCOUNTS PERCENT OF TOTAL	PRIVATE TRUST ACCOUNTS AMOUNT	PRIVATE TRUST ACCOUNTS RANK	PRIVATE TRUST ACCOUNTS PERCENT OF TOTAL	AGENCY ACCOUNTS AMOUNT	AGENCY ACCOUNTS RANK
SMSA CODE 600 ALLENTOWN-BETHLEHEM-EASTON, PA.-N.J.											
1	THE FIRST NATIONAL BANK OF ALLENTOWN ALLENTOWN, PENNSYLVANIA	114,972	40.50	3,651	1	27.46	101,250	1	43.96	10,071	2
2	THE FIRST NATIONAL BANK AND TRUST BETHLEHEM, PENNSYLVANIA	47,357	16.71	1,998	2	15.03	26,144	5	11.35	19,216	1
3	LEHIGH VALLEY TRUST COMPANY	31,241	11.03	1,984	3	14.92	29,184	7	12.67	73	7
4	UNION BANK AND TRUST COMPANY OF BETHLEHEM, PENNSYLVANIA	27,613	9.75	1,940	4	14.59	18,527	9	8.04	7,151	3
5	EASTON NATIONAL BANK AND TRUST EASTON, PENNSYLVANIA	25,127	8.87	1,016	6	7.64	21,932	4	9.52	2,179	4
6	THE MERCHANTS NATIONAL BANK OF ALLENTOWN, PENNSYLVANIA	18,276	6.45	1,155	5	8.69	16,208	6	7.04	913	5
7	NAZARETH NATIONAL BANK AND NAZARETH, PENNSYLVANIA	6,304	2.22	309	8	2.32	5,995	7	2.60	0	
8	LAFAYETTE TRUST BANK EASTON, PENNSYLVANIA	2,464	.87	102	12	.77	2,362	8	1.03	0	
9	THE CENTU NATIONAL BANK, NORTHAMPTON, PENNSYLVANIA	2,356	.83	562	7	4.23	1,795	10	.78	0	
10	THE PHILLIPSBURG NATIONAL BANK AND PHILLIPSBURG, NEW JERSEY	2,331	.82	136	10	1.02	2,083	9	.90	113	6
11	THE FIRST NATIONAL BANK OF WASHINGTON, NEW JERSEY	1,165	.41	111	11	.83	1,054	11	.46	0	
12	SAUCON VALLEY TRUST COMPANY HELLERTOWN, PENNSYLVANIA	998	.35	190	9	1.43	788	12	.34	20	8
13	THE FIRST NATIONAL BANK OF PEN ARGYL, PENNSYLVANIA	739	.26	0			739	13	.32	0	
14	THE WASHINGTON TRUST COMPANY WASHINGTON, NEW JERSEY	690	.24	0			690	14	.30	0	
15	THE PEOPLES NATIONAL BANK OF HACKETTSTOWN, NEW JERSEY	616	.22	0			616	15	.27	0	
16	THE MERCHANTS NATIONAL BANK OF BANGOR, PENNSYLVANIA	482	.17	48	14	.36	434	16	.19	0	
17	PHILLIPSBURG TRUST COMPANY PHILLIPSBURG, NEW JERSEY	178	.06	0			177	17	.08	1	10
18	THE HACKETTSTOWN NATIONAL BANK HACKETTSTOWN, NEW JERSEY	166	.06	0			166	18	.07	0	
19	SLATINGTON NATIONAL BANK AND SLATINGTON, PENNSYLVANIA	144	.05	0			136	19	.06	8	9
20	THE SECOND NATIONAL BANK OF PHILLIPSBURG, NEW JERSEY	125	.04	93	13	.70	32	20	.01	0	
TOTAL VALUES FOR SMSA NO. 600		283,344		13,295			230,307			39,749	

SOURCE: U.S. Congress, House, Committee on Banking and Currency, Staff Report, Commercial Banks and Their Trust Activities: Emerging Influence on the American Economy, Volume II, 90th Cong., 2d sess. July 8, 1968.

IX-5

TRUST ASSETS, RANK AND SHARE OF ALL BANK TRUST ASSETS IN NATION AND IN STANDARD METROPOLITAN STATISTICAL AREA OF BANKS IN CONTESTED SECTION 7 BANK MERGER CASES, END OF YEAR 1967
(Amounts in $ thousands)

	Total Trust Assets	Position in Nation a/		Position in SMSA a/	
		Rank	Percent of Total	Rank	Percent of Total
anufacturers Hanover ew York, New York	7,337,657	7	2.93	6	9.0
ntinental Illinois Chicago, Illinois	5,137,319	10	2.05	2	24.5
ocker Citizens an Francisco, California	2,081,162	23	.83	2	23.4
ited California os Angeles, California	1,702,443	28	.68	2	33.1
rst Western Bank & Trust os Angeles, California	343,147	98	.14	4	6.7
MBINED	2,045,590	24	.82	2	39.8
iladelphia National Bank hiladelphia, Pennsylvania	574,108	75	.23	6	5.1
rard Trust hiladelphia, Pennsylvania	2,930,613	19	1.17	1	26.0
MBINED	3,504,721	17	1.40	1	31.1
ovident National Bank hiladelphia, Pennsylvania	1,676,209	29	.67	4	14.9
ntral Penn hiladelphia, Pennsylvania	87,275	256	.03	8	.8
MBINED	1,763,484	27	.70	4	15.7

	Total Trust Assets	Position in Nation a/ Rank	Position in Nation a/ Percent of Total	Position in St Rank	Position in St Percent of To
First City National Bank Houston, Texas	441,861	90	.18	1	39.
Southern National Bank Houston, Texas	10,125	808	*	5	.
COMBINED	451,956	88	.18	1	40.
Mercantile Trust St. Louis, Missouri	1,530,201	36	.61	1	63.
Third National Bank Nashville, Tennessee	330,463	103	.13	1	52.
First National Bank Honolulu, Hawaii	153,618	165	.06	1	100.
Phillipsburg National Bank Phillipsburg, New Jersey	2,331	1346	*	10	.
Second National Bank Phillipsburg, New Jersey	125	2429	*	20	.
COMBINED	2,456	1323	*	9	.

* Less than .005.

a/ Based on initial 2890 responses received by the Committee and does not take into account 104 late responses. Taking account of the late responses would lead to only relatively small changes in the rank and share of trust assets held by the listed banks.

SOURCE: U.S. Congress, House, Committee on Banking and Currency, Staff Report, Commercial Banks and Their Trust Activities: Emerging Influence on the American Economy, Volume II, 90th Cong., 2d sess., July 8, 1968.

-IN ORDER BY TRUST DEPARTMENT SIZE-
(AMOUNTS IN THOUSANDS)

TOTAL TRUST ASSET RANK	BANK NAME CITY, STATE	TOTAL TRUST ASSETS AMOUNT	TOTAL TRUST ASSETS PERCENT OF TOTAL	EMPLOYEE BENEFIT ACCOUNTS AMOUNT	EMPLOYEE BENEFIT ACCOUNTS RANK	EMPLOYEE BENEFIT ACCOUNTS PERCENT OF TOTAL	PRIVATE TRUST ACCOUNTS AMOUNT	PRIVATE TRUST ACCOUNTS RANK	PRIVATE TRUST ACCOUNTS PERCENT OF TOTAL	AGENCY ACCOUNTS AMOUNT	AGENCY ACCOUNTS RANK
1	MORGAN GUARANTY TRUST NEW YORK CITY, NEW YORK	16,824,731	6.73	9,654,857	1	13.34	3,172,224	3	2.56	3,997,650	3
2	THE CHASE MANHATTAN BANK NEW YORK CITY, NEW YORK	13,644,056	5.45	6,513,196	3	9.00	3,011,260	6	2.43	4,119,600	2
3	BANKERS TRUST COMPANY NEW YORK CITY, NEW YORK	11,090,765	4.43	7,685,366	2	10.62	2,168,123	12	1.75	1,237,275	7
4	FIRST NATIONAL CITY BANK NEW YORK CITY, NEW YORK	10,871,500	4.35	4,706,186	4	6.50	4,101,773	1	3.31	2,063,541	4
5	UNITED STATES TRUST NEW YORK CITY, NEW YORK	8,398,623	3.36	693,404	17	.96	3,172,053	4	2.56	4,533,167	1
6	MELLON NATIONAL BANK AND PITTSBURGH, PENNSYLVANIA	7,429,595	3.05	3,289,171	5	4.55	3,130,790	5	2.52	1,209,634	9
7	MANUFACTURERS HANOVER TRUST COMPANY NEW YORK CITY, NEW YORK	7,337,657	2.93	2,701,132	7	3.73	2,896,250	7	2.34	1,740,275	5
8	WILMINGTON TRUST COMPANY WILMINGTON, DELAWARE	5,624,571	2.25	1,456,192	11	2.01	3,948,850	2	3.18	219,530	52
9	THE FIRST NATIONAL BANK OF CHICAGO CHICAGO, ILLINOIS	5,430,293	2.17	2,978,311	6	4.12	1,823,371	17	1.47	628,612	18
10	CONTINENTAL ILLINOIS NATIONAL BANK CHICAGO, ILLINOIS	5,137,319	2.05	2,217,216	8	3.06	1,956,976	14	1.58	963,126	11
11	CHEMICAL BANK NEW YORK NEW YORK CITY, NEW YORK	4,593,253	1.84	1,737,525	10	2.40	1,842,842	16	1.49	1,012,886	10
12	THE NORTHERN TRUST COMPANY CHICAGO, ILLINOIS	4,542,230	1.82	452,642	24	.63	2,629,338	8	2.12	1,460,250	6
13	OLD COLONY TRUST COMPANY BOSTON, MASSACHUSETTS	4,224,979	1.69	1,447,477	12	2.00	2,203,856	11	1.78	573,640	23
14	HARRIS TRUST AND SAVINGS BANK CHICAGO, ILLINOIS	3,869,072	1.55	1,272,188	14	1.76	1,875,177	15	1.51	721,706	14
15	BANK OF AMERICA NATIONAL TRUST AND SAV FRANCISCO, CALIFORNIA	3,696,447	1.48	1,413,227	13	1.95	2,139,495	13	1.73	143,725	69
16	THE CLEVELAND TRUST COMPANY CLEVELAND, OHIO	3,605,442	1.44	981,678	15	1.36	2,333,570	10	1.89	290,194	34
17	NATIONAL BANK OF DETROIT DETROIT, MICHIGAN	3,427,431	1.37	2,012,619	9	2.78	703,321	40	.57	711,490	15
18	THE BANK OF NEW YORK NEW YORK CITY, NEW YORK	3,326,397	1.33	421,987	28	.58	1,673,606	18	1.35	1,230,804	8
19	GIRARD TRUST BANK PHILADELPHIA, PENNSYLVANIA	2,930,613	1.17	322,179	35	.45	2,341,476	9	1.89	266,958	40
20	THE FIRST PENNSYLVANIA BANKING AND PHILADELPHIA, PENNSYLVANIA	2,686,917	1.07	436,482	26	.60	1,499,027	21	1.21	751,409	13
21	MERCANTILE-SAFE DEPOSIT AND BALTIMORE, MARYLAND	2,309,354	.92	130,296	56	.18	1,486,993	22	1.20	692,065	16
22	SECURITY FIRST NATIONAL BANK LOS ANGELES, CALIFORNIA	2,212,914	.88	422,067	27	.58	1,538,838	19	1.24	252,009	43
23	CROCKER-CITIZENS NATIONAL BANK SAN FRANCISCO, CALIFORNIA	2,081,167	.83	538,495	23	.74	1,015,772	30	.82	526,896	21
24	THE FIDELITY BANK PHILADELPHIA, PENNSYLVANIA	2,014,975	.81	136,457	55	.19	1,529,395	20	1.23	349,123	30
25	WELLS FARGO BANK SAN FRANCISCO, CALIFORNIA	1,896,895	.76	391,623	31	.54	1,227,476	25	.99	277,796	37

TABLE 4—Continued

TOTAL TRUST ASSETS AND ASSETS BY TYPE OF ACCOUNT

-IN ORDER BY TRUST DEPARTMENT SIZE-
(AMOUNTS IN THOUSANDS)

TOTAL TRUST ASSET RANK	BANK NAME CITY, STATE	TOTAL TRUST ASSETS AMOUNT	TOTAL TRUST ASSETS PERCENT OF TOTAL	EMPLOYEE BENEFIT ACCOUNTS AMOUNT	EMPLOYEE BENEFIT ACCOUNTS RANK	EMPLOYEE BENEFIT ACCOUNTS PERCENT OF TOTAL	PRIVATE TRUST ACCOUNTS AMOUNT	PRIVATE TRUST ACCOUNTS RANK	PRIVATE TRUST ACCOUNTS PERCENT OF TOTAL	AGENCY ACCOUNTS AMOUNT	AGENCY ACCOUNTS RANK
26	PITTSBURGH NATIONAL BANK PITTSBURGH, PENNSYLVANIA	1,894,917	.76	302,139	36	.42	1,353,807	23	1.09	238,971	46
27	THE DETROIT BANK AND TRUST COMPANY DETROIT, MICHIGAN	1,752,773	.70	393,547	30	.54	1,071,668	28	.86	287,558	35
28	UNITED CALIFORNIA BANK LOS ANGELES, CALIFORNIA	1,702,443	.68	895,111	16	1.24	602,592	46	.49	204,741	54
29	PROVIDENT NATIONAL BANK PHILADELPHIA, PENNSYLVANIA	1,676,209	.67	233,806	41	.32	1,222,260	26	.99	220,144	51
30	IRVING TRUST COMPANY NEW YORK CITY, NEW YORK	1,656,289	.66	668,036	19	.92	552,776	49	.45	435,507	25
31	THE CONNECTICUT BANK AND HARTFORD, CONNECTICUT	1,622,488	.65	186,695	48	.26	1,007,290	31	.81	428,504	27
32	BOSTON SAFE DEPOSIT AND TRUST BOSTON, MASSACHUSETTS	1,606,162	.64	37,534	126	.04	1,331,861	24	1.07	241,766	45
33	NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS, MINNESOTA	1,604,496	.64	439,283	25	.61	803,365	35	.65	361,849	29
34	WACHOVIA BANK AND TRUST COMPANY WINSTON-SALEM, NORTH CAROLINA	1,585,994	.63	551,113	22	.76	852,748	33	.69	182,133	59
35	STATE STREET BANK AND TRUST COMPANY BOSTON, MASSACHUSETTS	1,583,392	.63	222,889	42	.31	1,024,499	29	.83	336,003	32
36	MERCANTILE TRUST COMPANY ST. LOUIS, MISSOURI	1,530,201	.61	420,052	29	.58	887,647	32	.72	222,503	49
37	RHODE ISLAND HOSPITAL TRUST COMPANY PROVIDENCE, RHODE ISLAND	1,517,242	.61	51,363	95	.07	801,518	36	.65	664,361	17
38	TRUST COMPANY OF GEORGIA ATLANTA, GEORGIA	1,500,099	.60	195,819	45	.27	694,781	41	.56	609,499	19
39	NEW ENGLAND MERCHANTS NATIONAL BANK BOSTON, MASSACHUSETTS	1,483,374	.59	61,768	83	.09	1,153,032	27	.93	268,574	39
40	MARINE MIDLAND GRACE TRUST COMPANY NEW YORK CITY, NEW YORK	1,474,273	.59	670,018	18	.93	369,234	67	.30	435,021	26
41	THE NATIONAL CITY BANK OF CLEVELAND CLEVELAND, OHIO	1,463,476	.58	384,139	32	.53	846,256	34	.68	233,079	47
42	HARTFORD NATIONAL BANK AND TRUST HARTFORD, CONNECTICUT	1,435,339	.57	161,896	51	.22	771,892	38	.62	501,552	23
43	THE FIRST NATIONAL BANK OF BOSTON BOSTON, MASSACHUSETTS	1,335,969	.53	658,058	20	.91	625,568	44	.50	52,339	123
44	LINCOLN ROCHESTER TRUST COMPANY ROCHESTER, NEW YORK	1,307,052	.52	180,435	49	.25	777,625	37	.63	348,991	31
45	MANUFACTURERS NATIONAL BANK OF DETROIT, MICHIGAN	1,282,614	.51	615,484	21	.85	380,064	63	.31	287,066	36
46	FIDUCIARY TRUST COMPANY OF NEW YORK NEW YORK CITY, NEW YORK	1,135,160	.45	3,322	399	*	281,401	83	.23	850,437	12
47	THE TOLEDO TRUST COMPANY TOLEDO, OHIO	1,078,962	.43	240,433	40	.33	735,738	39	.59	102,791	80
48	FIDELITY UNION TRUST COMPANY	1,078,305	.43	266,937	38	.37	693,126	43	.55	118,242	69

(AMOUNTS IN THOUSANDS)

TOTAL TRUST ASSET RANK	BANK NAME CITY, STATE	TOTAL TRUST ASSETS AMOUNT	TOTAL TRUST ASSETS PERCENT OF TOTAL	EMPLOYEE BENEFIT ACCOUNTS AMOUNT	EMPLOYEE BENEFIT ACCOUNTS RANK	EMPLOYEE BENEFIT ACCOUNTS PERCENT OF TOTAL	PRIVATE TRUST ACCOUNTS AMOUNT	PRIVATE TRUST ACCOUNTS RANK	PRIVATE TRUST ACCOUNTS PERCENT OF TOTAL	AGENCY ACCOUNTS AMOUNT	AGENCY ACCOUNTS RANK
51	THE CENTRAL TRUST COMPANY CINCINNATI, OHIO	923,994	.37	197,070	44	.27	563,577	48	.45	163,348	63
52	FIRST NATIONAL BANK OF MINNEAPOLIS MINNEAPOLIS, MINNESOTA	920,357	.37	292,723	37	.40	483,802	54	.39	143,832	68
53	REPUBLIC NATIONAL BANK OF DALLAS DALLAS, TEXAS	904,435	.36	344,082	33	.48	398,719	60	.32	161,633	64
54	AMERICAN SECURITY AND WASHINGTON, D. C.	903,592	.36	57,350	93	.08	369,308	66	.30	476,934	24
55	THE UNION NATIONAL BANK OF PITTSBURGH, PENNSYLVANIA	830,954	.33	60,711	89	.08	527,622	50	.43	242,621	44
56	THE FIFTH THIRD UNION TRUST COMPANY CINCINNATI, OHIO	772,815	.31	103,643	62	.14	496,920	51	.40	172,253	61
57	FIRST WISCONSIN TRUST COMPANY MILWAUKEE, WISCONSIN	771,319	.31	332,051	34	.46	338,136	74	.27	101,132	82
58	CENTRAL NATIONAL BANK OF CLEVELAND CLEVELAND, OHIO	743,262	.30	198,662	43	.27	448,994	56	.36	95,606	86
59	SECURITY TRUST COMPANY ROCHESTER, NEW YORK	739,595	.30	61,311	87	.08	402,555	58	.32	275,730	39
60	UNION BANK LOS ANGELES, CALIFORNIA	717,902	.29	195,164	46	.27	458,361	55	.37	64,378	106
61	NORTH CAROLINA NATIONAL BANK CHARLOTTE, NORTH CAROLINA	709,979	.28	147,455	53	.20	493,442	52	.40	69,043	134
62	THE RIGGS NATIONAL BANK WASHINGTON, D. C.	667,605	.27	99,070	63	.14	373,538	64	.30	194,997	57
63	THE BOATMEN'S NATIONAL BANK OF ST. LOUIS, MISSOURI	666,483	.27	35,738	121	.05	234,015	96	.19	396,711	28
64	CITIZENS FIDELITY BANK AND LOUISVILLE, KENTUCKY	647,501	.26	36,298	119	.05	418,801	57	.34	192,402	58
65	THE FIRST NATIONAL BANK OF CINCINNATI, OHIO	645,327	.26	128,465	57	.14	345,439	61	.31	131,424	73
66	CAMDEN TRUST COMPANY CAMDEN, NEW JERSEY	641,584	.26	16,553	179	.02	622,249	45	.50	2,782	576
67	THE INDIANA NATIONAL BANK OF INDIANAPOLIS, INDIANA	634,601	.25	86,237	68	.12	291,485	82	.24	256,879	42
68	BANK OF DELAWARE WILMINGTON, DELAWARE	623,039	.25	17,177	175	.02	575,624	47	.46	30,237	165
69	DELAWARE TRUST COMPANY WILMINGTON, DELAWARE	618,552	.25	56,743	94	.08	486,113	53	.39	75,697	94
70	FIRST AND MERCHANTS NATIONAL BANK RICHMOND, VIRGINIA	608,920	.24	37,675	117	.05	309,932	78	.25	261,312	41
71	AMERICAN NATIONAL BANK AND TRUST CHICAGO, ILLINOIS	603,105	.24	117,817	59	.16	264,554	88	.21	220,735	53
72	THE KENTUCKY TRUST COMPANY LOUISVILLE, KENTUCKY	590,755	.24	58,861	91	.08	301,841	80	.24	230,053	48
73	INDUSTRIAL NATIONAL BANK OF PROVIDENCE, RHODE ISLAND	583,845	.23	160,777	52	.22	331,702	75	.27	91,366	90
74	THE FIRST NATIONAL BANK OF ATLANTA ATLANTA, GEORGIA	576,155	.23	90,936	66	.13	271,067	85	.22	214,152	53
75	THE PHILADELPHIA NATIONAL BANK PHILADELPHIA, PENNSYLVANIA	574,108	.23	192,201	47	.27	279,825	84	.23	102,082	81

TOTAL TRUST ASSETS AND ASSETS BY TYPE OF ACCOUNT

-IN ORDER BY TRUST DEPARTMENT SIZE-
(AMOUNTS IN THOUSANDS)

TOTAL TRUST ASSET RANK	BANK NAME CITY, STATE	TOTAL TRUST ASSETS AMOUNT	TOTAL TRUST ASSETS PERCENT OF TOTAL	EMPLOYEE BENEFIT ACCOUNTS AMOUNT	EMPLOYEE BENEFIT ACCOUNTS RANK	EMPLOYEE BENEFIT ACCOUNTS PERCENT OF TOTAL	PRIVATE TRUST ACCOUNTS AMOUNT	PRIVATE TRUST ACCOUNTS RANK	PRIVATE TRUST ACCOUNTS PERCENT OF TOTAL	AGENCY ACCOUNTS AMOUNT	AGENCY ACCOUNTS RANK
76	AMERICAN FLETCHER NATIONAL BANK INDIANAPOLIS, INDIANA	557,984	.22	43,059	108	.06	381,652	62	.31	133,273	72
77	FIRST NATIONAL BANK IN DALLAS DALLAS, TEXAS	552,113	.22	98,043	64	.14	359,744	69	.29	94,326	88
78	MARINE MIDLAND TRUST COMPANY OF BUFFALO, NEW YORK	550,660	.22	60,949	88	.08	324,062	77	.26	165,649	62
79	UNITED STATES NATIONAL BANK OF PORTLAND, OREGON	514,843	.21	84,426	71	.12	369,118	68	.30	61,339	112
80	THE EQUITABLE TRUST COMPANY BALTIMORE, MARYLAND	504,701	.20	41,034	110	.06	143,062	131	.12	320,605	33
81	NATIONAL NEWARK AND ESSEX BANK NEWARK, NEW JERSEY	494,234	.20	79,456	73	.11	298,086	81	.24	116,692	76
82	MARYLAND NATIONAL BANK BALTIMORE, MARYLAND	492,140	.20	59,644	90	.08	328,078	76	.26	104,417	79
83	THE FIRST NATIONAL BANK OF DENVER DENVER, COLORADO	489,159	.20	61,462	85	.08	356,364	70	.29	71,332	101
84	STATE-PLANTERS BANK OF COMMERCE RICHMOND, VIRGINIA	476,494	.19	37,222	118	.05	302,954	79	.24	136,319	70
85	MERCHANTS NATIONAL BANK & TRUST INDIANAPOLIS, INDIANA	473,963	.19	31,413	132	.04	370,633	65	.30	71,918	99
86	THE WINTERS NATIONAL BANK AND TRUST DAYTON, OHIO	468,381	.19	71,779	76	.10	340,152	73	.27	56,193	117
87	THE UNION AND NEW HAVEN NEW HAVEN, CONNECTICUT	455,986	.18	36,292	120	.05	217,127	106	.18	202,567	55
88	MARINE NATIONAL EXCHANGE BANK OF MILWAUKEE, WISCONSIN	450,270	.18	122,614	58	.17	172,968	120	.14	154,688	66
89	THE NATIONAL SHAWMUT BANK OF BOSTON BOSTON, MASSACHUSETTS	446,914	.18	84,797	70	.12	236,616	95	.19	125,501	74
90	FIRST CITY NATIONAL BANK OF HOUSTON HOUSTON, TEXAS	441,861	.18	175,833	50	.24	224,107	103	.18	41,922	141
91	THE FIRST NATIONAL BANK BIRMINGHAM, ALABAMA	438,797	.18	143,011	54	.20	232,781	97	.19	62,505	108
92	THE FIRST NATIONAL BANK OF KANSAS CITY, MISSOURI	434,652	.17	62,333	82	.09	350,576	72	.28	21,744	202
93	THE FLORIDA NATIONAL BANK OF JACKSONVILLE, FLORIDA	417,359	.17	14,705	193	.02	401,448	59	.32	1,205	741
94	CITY TRUST COMPANY BRIDGEPORT, CONNECTICUT	398,731	.16	45,176	104	.06	265,669	87	.21	87,855	91
95	NATIONAL SAVINGS AND WASHINGTON, D. C.	397,242	.16	6,117	298	.01	212,384	110	.17	178,741	60
96	MARSHALL AND ILSLEY BANK MILWAUKEE, WISCONSIN	392,712	.16	104,524	61	.14	226,750	99	.18	61,438	111
97	DENVER UNITED STATES NATIONAL BANK DENVER, COLORADO	357,763	.14	66,122	80	.09	269,536	86	.22	22,105	197
98	FIRST WESTERN BANK AND TRUST COMPANY LOS ANGELES, CALIFORNIA	349,147	.14	71,281	77	.10	249,993	91	.20	27,273	195
99	AMERICAN NATIONAL BANK AND TRUST SAN FRANCISCO, CALIFORNIA	342,011	.14	20,309	165	.03	222,112	104	.18	99,590	83

-IN ORDER BY TRUST DEPARTMENT SIZE-
(AMOUNTS IN THOUSANDS)

TOTAL TRUST ASSET RANK	BANK NAME CITY, STATE	TOTAL TRUST ASSETS AMOUNT	TOTAL TRUST ASSETS PERCENT OF TOTAL	EMPLOYEE BENEFIT ACCOUNTS AMOUNT	EMPLOYEE BENEFIT ACCOUNTS RANK	EMPLOYEE BENEFIT ACCOUNTS PERCENT OF TOTAL	PRIVATE TRUST ACCOUNTS AMOUNT	PRIVATE TRUST ACCOUNTS RANK	PRIVATE TRUST ACCOUNTS PERCENT OF TOTAL	AGENCY ACCOUNTS AMOUNT	AGENCY ACCOUNTS RANK
101	THE FIRST NATIONAL BANK AND TRUST TULSA, OKLAHOMA	336,144	.13	71,939	75	.10	227,516	105	.16	41,690	142
102	THE NATIONAL BANK OF COMMERCE SEATTLE, WASHINGTON	331,737	.13	32,159	129	.04	237,390	93	.19	62,188	113
103	THIRD NATIONAL BANK IN NASHVILLE NASHVILLE, TENNESSEE	330,463	.13	17,783	172	.02	242,683	92	.20	69,997	103
104	THE COLONIAL BANK AND TRUST COMPANY WATERBURY, CONNECTICUT	328,792	.13	29,319	136	.04	236,963	94	.19	62,509	107
105	FIRST NATIONAL BANK OF RENO, NEVADA	323,143	.13	3,663	379	.01	121,760	148	.10	197,720	56
106	OLD KENT BANK AND TRUST COMPANY GRAND RAPIDS, MICHIGAN	321,290	.13	82,324	72	.11	225,066	102	.18	13,900	272
107	VIRGINIA NATIONAL BANK NORFOLK, VIRGINIA	306,365	.12	32,128	130	.04	226,360	100	.18	47,877	130
108	THE VALLEY NATIONAL BANK PHOENIX, ARIZONA	295,868	.12	10,309	234	.01	259,026	89	.21	26,533	181
109	THE FORT WORTH NATIONAL BANK FORT WORTH, TEXAS	294,115	.12	48,631	101	.07	213,314	109	.17	32,172	161
110	FIRST NATIONAL BANK OF OREGON PORTLAND, OREGON	293,669	.12	85,228	69	.12	176,021	117	.14	32,420	160
111	WORCESTER COUNTY NATIONAL BANK WORCESTER, MASSACHUSETTS	284,501	.11	23,328	151	.03	256,607	90	.21	4,567	471
112	THE FIRST NEW HAVEN NATIONAL BANK NEW HAVEN, CONNECTICUT	281,425	.11	39,300	115	.05	147,589	124	.12	94,537	87
113	NATIONAL BANK OF TULSA TULSA, OKLAHOMA	281,103	.11	15,844	186	.02	230,212	98	.19	35,047	153
114	THE HUNTINGTON NATIONAL BANK OF COLUMBUS, OHIO	280,994	.11	61,367	86	.08	175,335	118	.14	44,292	137
115	AMERICAN BANK AND TRUST CO. OF PA. READING, PENNSYLVANIA	271,305	.11	67,612	79	.09	145,468	130	.12	58,225	115
116	THE CITY NATIONAL BANK AND TRUST KANSAS CITY, MISSOURI	267,627	.11	65,907	81	.09	131,584	138	.11	70,136	102
117	THE FAIRFIELD COUNTY TRUST COMPANY STAMFORD, CONNECTICUT	265,553	.11	13,913	199	.02	178,807	115	.14	72,938	97
118	COMMERCE TRUST COMPANY KANSAS CITY, MISSOURI	261,382	.10	61,602	84	.09	193,429	112	.16	6,350	413
119	THE FIRST NATIONAL BANK AND TRUST KALAMAZOO, MICHIGAN	258,597	.10	9,820	244	.01	225,176	101	.18	23,601	189
120	THE SOUTH CAROLINA NATIONAL BANK OF CHARLESTON, SOUTH CAROLINA	256,988	.10	47,132	103	.07	190,479	113	.15	17,378	237
121	THE COLORADO NATIONAL BANK OF DENVER DENVER, COLORADO	256,787	.10	8,895	254	.01	134,732	136	.11	111,161	77
122	THE FIRST NATIONAL BANK OF FORT WORTH, TEXAS	246,757	.10	40,936	112	.06	160,060	123	.13	45,761	134
123	UNION PLANTERS NATIONAL BANK MEMPHIS, TENNESSEE	244,596	.10	21,365	158	.03	173,525	119	.14	49,706	127
124	TEXAS NATIONAL BANK OF COMMERCE HOUSTON, TEXAS	239,558	.10	27,465	141	.04	172,003	121	.14	40,093	144
125	MOLINE NATIONAL BANK MOLINE, ILLINOIS	232,658	.09	3,159	412	*	215,892	107	.17	13,607	275

TOTAL TRUST ASSETS AND ASSETS BY TYPE OF ACCOUNT

-IN ORDER BY TRUST DEPARTMENT SIZE-
(AMOUNTS IN THOUSANDS)

TOTAL TRUST ASSET RANK	BANK NAME CITY, STATE	TOTAL TRUST ASSETS AMOUNT	TOTAL TRUST ASSETS PERCENT OF TOTAL	EMPLOYEE BENEFIT ACCOUNTS AMOUNT	EMPLOYEE BENEFIT ACCOUNTS RANK	EMPLOYEE BENEFIT ACCOUNTS PERCENT OF TOTAL	PRIVATE TRUST ACCOUNTS AMOUNT	PRIVATE TRUST ACCOUNTS RANK	PRIVATE TRUST ACCOUNTS PERCENT OF TOTAL	AGENCY ACCOUNTS AMOUNT	AGENCY ACCOUNTS RANK
151	FIRST BANK AND TRUST COMPANY OF SOUTH BEND, INDIANA	175,914	.07	45,057	105	.06	70,796	226	.06	60,071	113
152	THE FIRST NATIONAL BANK OF COLORADO SPRINGS, COLORADO	175,836	.07	10,211	234	.01	117,195	151	.09	48,430	129
153	SPRINGFIELD MARINE BANK SPRINGFIELD, ILLINOIS	174,762	.07	7,180	275	.01	105,163	161	.08	62,419	109
154	IOWA-DES MOINES NATIONAL BANK DES MOINES, IOWA	174,586	.07	5,869	305	.01	93,731	177	.08	74,995	95
155	THE HAMILTON NATIONAL BANK OF CHATTANOOGA, TENNESSEE	174,301	.07	15,713	188	.02	81,667	202	.07	76,921	93
156	THE SECOND NATIONAL BANK NEW HAVEN, CONNECTICUT	171,406	.07	3,993	361	.01	130,679	140	.11	36,735	151
157	THE CONNECTICUT NATIONAL BANK BRIDGEPORT, CONNECTICUT	171,220	.07	20,417	161	.03	101,875	166	.08	48,934	128
158	BARNETT FIRST NATIONAL BANK OF JACKSONVILLE, FLORIDA	167,511	.07	10,808	230	.01	102,812	165	.08	53,891	121
159	FIRST NATIONAL STATE BANK OF NEWARK, NEW JERSEY	159,244	.06	17,362	174	.02	122,941	146	.10	18,942	226
160	THE UNION COMMERCE BANK CLEVELAND, OHIO	158,943	.06	51,069	97	.07	81,552	203	.07	26,322	182
161	THE HARTER BANK & TRUST COMPANY CANTON, OHIO	157,355	.06	16,719	178	.02	135,711	134	.11	4,925	457
162	FIRST NATIONAL BANK OF TOLEDO TOLEDO, OHIO	155,549	.06	69,078	78	.10	71,324	225	.06	15,147	256
163	THE BOARDWALK NATIONAL BANK ATLANTIC CITY, NEW JERSEY	155,426	.06	4,532	341	.01	41,302	315	.03	109,592	78
164	SCHRODER TRUST COMPANY NEW YORK CITY, NEW YORK	155,314	.06	30,368	134	.04	30,807	369	.02	94,139	89
165	FIRST NATIONAL BANK OF HAWAII HONOLULU, HAWAII	153,514	.06	19,499	164	.03	99,340	169	.08	34,379	154
166	THE FROST NATIONAL BANK OF SAN ANTONIO, TEXAS	153,135	.06	5,997	302	.01	133,393	137	.11	13,746	274
167	THE DOLLAR SAVINGS AND TRUST COMPANY YOUNGSTOWN, OHIO	152,985	.06	11,354	224	.02	127,469	143	.10	14,163	268
168	THE PACIFIC NATIONAL BANK OF SEATTLE SEATTLE, WASHINGTON	152,783	.06	16,054	184	.02	128,566	141	.10	8,163	353
169	TRUST COMPANY NATIONAL BANK MORRISTOWN, NEW JERSEY	152,433	.06	3,658	340	.01	118,567	150	.10	30,208	166
170	FIRST WESTCHESTER NATIONAL BANK NEW ROCHELLE, NEW YORK	151,529	.06	0			53,785	263	.04	97,843	84
171	THE LOUISVILLE TRUST COMPANY LOUISVILLE, KENTUCKY	151,364	.06	34,462	123	.05	69,056	230	.06	47,646	131
172	THE NATIONAL BANK AND TRUST SOUTH BEND, INDIANA	148,042	.06	4,994	329	.01	47,087	295	.04	96,001	85
173	KINGS COUNTY LAFAYETTE TRUST COMPANY NEW YORK, NEW YORK	146,148	.06	6,856	289	.01	84,104	193	.07	55,187	122
174	STATE BANK OF ALBANY, NEW YORK	139,255	.06	20,745	159	.03	95,955	174	.08	22,555	212

(AMOUNTS IN THOUSANDS)

TOTAL TRUST ASSET RANK	BANK NAME CITY, STATE	TOTAL TRUST ASSETS AMOUNT	TOTAL TRUST ASSETS PERCENT OF TOTAL	EMPLOYEE BENEFIT ACCOUNTS AMOUNT	EMPLOYEE BENEFIT ACCOUNTS RANK	EMPLOYEE BENEFIT ACCOUNTS PERCENT OF TOTAL	PRIVATE TRUST ACCOUNTS AMOUNT	PRIVATE TRUST ACCOUNTS RANK	PRIVATE TRUST ACCOUNTS PERCENT OF TOTAL	AGENCY ACCOUNTS AMOUNT	AGENCY ACCOUNTS RANK
251	HACKLEY UNION NATIONAL BANK AND MUSKEGON, MICHIGAN	92,662	.04	40,701	113	.06	45,184	296	.04	6,776	395
252	FIRST NATIONAL BANK IN PALM BEACH, FLORIDA	90,900	.04	688	743	•	75,389	220	.06	14,823	260
253	NATIONAL BANK OF WASHINGTON, TACOMA, WASHINGTON	90,731	.04	4,519	344	.01	81,175	204	.07	5,037	451
254	THE MERCHANTS NATIONAL BANK & TRUST SYRACUSE, NEW YORK	89,280	.04	29,750	138	.04	38,839	327	.03	21,696	203
255	THE FIRST NATIONAL BANK OF ERIE ERIE, PENNSYLVANIA	89,225	.04	4,243	351	.01	60,852	245	.05	24,133	186
256	CENTRAL-PENN NATIONAL BANK OF PHILADELPHIA, PENNSYLVANIA	87,275	.03	32,302	124	.04	49,906	281	.04	5,067	449
257	OLD NATIONAL BANK OF WASHINGTON, SPOKANE, WASHINGTON	87,250	.03	5,884	304	.01	79,865	210	.06	1,501	695
258	THE FIRST NATIONAL BANK OF OMAHA OMAHA, NEBRASKA	87,224	.03	6,261	294	.01	69,101	229	.06	11,864	301
259	SAN DIEGO TRUST & SAVINGS BANK SAN DIEGO, CALIFORNIA	87,213	.03	9,428	247	.01	71,333	224	.06	6,452	407
260	THE FIRST NATIONAL BANK OF ELKHART, INDIANA	86,325	.03	15,770	187	.02	40,649	317	.03	29,907	169
261	OLD NATIONAL BANK IN EVANSVILLE EVANSVILLE, INDIANA	85,675	.03	18,450	169	.03	58,513	251	.05	8,712	340
262	COLUMBUS BANK AND TRUST COMPANY COLUMBUS, GEORGIA	85,000	.03	1,672	536	•	53,328	266	.04	30,000	168
263	JOHNSON COUNTY NATIONAL BANK AND PRAIRIE VILLAGE, KANSAS	84,797	.03	427	860	•	83,491	198	.07	879	792
264	LANCASTER COUNTY FARMERS LANCASTER, PENNSYLVANIA	84,660	.03	4,154	356	.01	58,824	250	.05	21,683	204
265	CENTRAL NATIONAL BANK AND TRUST DES MOINES, IOWA	84,533	.03	12,359	215	.02	52,984	268	.04	19,190	225
266	NEW BRITAIN BANK AND TRUST COMPANY NEW BRITAIN, CONNECTICUT	84,085	.03	1,987	507	•	43,808	304	.04	38,295	146
267	THE UNITED STATES NATIONAL OMAHA, NEBRASKA	82,488	.03	6,302	292	.01	50,494	277	.04	25,692	183
268	B. M. C. DURFEE TRUST COMPANY FALL RIVER, MASSACHUSETTS	81,551	.03	1,388	582	•	67,955	233	.05	12,249	296
269	EL PASO NATIONAL BANK EL PASO, TEXAS	81,027	.03	12,297	216	.02	61,715	243	.05	7,015	387
270	THE STATE NATIONAL BANK OF EL PASO EL PASO, TEXAS	80,301	.03	11,419	222	.02	67,095	235	.05	1,489	597
271	THE NATIONAL MANUFACTURERS BANK NEENAH, WISCONSIN	79,837	.03	11,125	228	.02	38,869	326	.03	29,843	170
272	THE ARYN MAWR TRUST COMPANY ARYN MAWR, PENNSYLVANIA	79,539	.03	1,578	552	•	70,707	227	.06	7,250	380
273	THE NATIONAL BANK AND TRUST NORWICH, NEW YORK	79,282	.03	4,744	335	.01	57,202	255	.05	17,336	238
274	AMERICAN NATIONAL BANK AND TRUST MUNCIE, INDIANA	78,921	.03	8,168	261	.01	49,761	287	.04	20,992	210
275	NATIONAL COMMUNITY BANK OF RUTHERFORD, NEW JERSEY	78,120	.03	15,080	191	.02	54,813	262	.04	8,227	350

TABLE A
TOTAL TRUST ASSETS AND ASSETS BY TYPE OF ACCOUNT

-IN ORDER BY TRUST DEPARTMENT SIZE-
(AMOUNTS IN THOUSANDS)

TOTAL TRUST ASSET RANK	BANK NAME CITY, STATE	TOTAL TRUST ASSETS AMOUNT	TOTAL TRUST ASSETS PERCENT OF TOTAL	EMPLOYEE BENEFIT ACCOUNTS AMOUNT	EMPLOYEE BENEFIT ACCOUNTS RANK	EMPLOYEE BENEFIT ACCOUNTS PERCENT OF TOTAL	PRIVATE TRUST ACCOUNTS AMOUNT	PRIVATE TRUST ACCOUNTS RANK	PRIVATE TRUST ACCOUNTS PERCENT OF TOTAL	AGENCY ACCOUNTS AMOUNT	AGENCY ACCOUNTS RANK
801	FIRST NATIONAL BANK OF APPLETON APPLETON, WISCONSIN	10,249	*	351	915	*	4,612	965	*	5,285	442
802	SALEM BANK AND TRUST COMPANY GOSHEN, INDIANA	10,228	*	847	694	*	9,329	724	.01	52	1249
803	VERMONT NATIONAL BANK BRATTLEBORO, VERMONT	10,205	*	743	729	*	7,426	806	.01	2,338	532
804	FIRST NATIONAL BANK AND TRUST WAYNESBURG, PENNSYLVANIA	10,203	*	56	1378	*	9,852	708	.01	294	1001
805	UNION NATIONAL BANK AND TRUST SOUDERTON, PENNSYLVANIA	10,191	*	450	851	*	9,536	717	.01	205	1060
806	CENTRAL NATIONAL BANK AND TRUST ENID, OKLAHOMA	10,161	*	1,305	601	*	7,776	1189	*	6,138	420
807	ELYRIA SAVINGS & TRUST NATIONAL BANK ELYRIA, OHIO	10,147	*	627	766	*	7,992	774	.01	1,527	687
808	SOUTHERN NATIONAL BANK OF HOUSTON HOUSTON, TEXAS	10,125	*	2,626	443	*	5,545	890	*	1,953	643
809	THE DOYLESTOWN NATIONAL BANK AND DOYLESTOWN, PENNSYLVANIA	9,992	*	441	854	*	8,506	752	.01	1,035	761
810	ROCK ISLAND BANK AND TRUST COMPANY ROCK ISLAND, ILLINOIS	9,924	*	798	713	*	8,828	739	.01	298	999
811	UNION BANK & TRUST COMPANY MONTGOMERY, ALABAMA	9,914	*	435	856	*	8,733	743	.01	746	828
812	THE MOUNT UNION BANK ALLIANCE, OHIO	9,857	*	516	815	*	8,825	740	.01	516	894
813	THE ANNISTON NATIONAL BANK ANNISTON, ALABAMA	9,842	*	1,546	557	*	8,296	761	.01	0	
814	THE FIRST NATIONAL BANK OF ROME ROME, GEORGIA	9,818	*	0			7,521	800	.01	2,296	608
815	THE DROVERS & MECHANICS NATIONAL YORK, PENNSYLVANIA	9,792	*	2,198	480	*	7,542	798	.01	51	1254
816	MERCHANTS NATIONAL BANK OF WINONA WINONA, MINNESOTA	9,791	*	849	693	*	6,983	824	.01	1,960	641
817	FIRST GULF BEACH BANK ST. PETERSBURG BEACH, FLORIDA	9,772	*	0			9,300	727	.01	472	914
818	THE FIRST NATIONAL BANK OF RIPON RIPON, WISCONSIN	9,759	*	80	1299	*	4,823	947	*	4,855	460
819	THE LORAIN NATIONAL BANK LORAIN, OHIO	9,733	*	498	827	*	9,017	732	.01	219	1048
820	THE NORTH SIDE BANK AND TRUST CINCINNATI, OHIO	9,631	*	7	1611	*	9,525	718	.01	105	1163
821	MERCHANTS BANK AND TRUST COMPANY MEADVILLE, PENNSYLVANIA	9,582	*	1,137	631	*	6,991	823	.01	1,454	706
822	CAPE ANN BANK AND TRUST COMPANY GLOUCESTER, MASSACHUSETTS	9,491	*	155	1133	*	6,351	848	.01	2,984	562
823	FIRST NATIONAL BANK IN MARION MARION, INDIANA	9,405	*	1,230	618	*	7,819	784	.01	356	964

TOTAL TRUST ASSET RANK	BANK NAME CITY, STATE	TOTAL TRUST ASSETS (THOUSANDS IN THOUSANDS) AMOUNT	PERCENT OF TOTAL	EMPLOYEE BENEFIT ACCOUNTS AMOUNT	RANK	PERCENT OF TOTAL	PRIVATE TRUST ACCOUNTS AMOUNT	RANK	PERCENT OF TOTAL	AGENCY ACCOUNTS AMOUNT	RANK
1326	THE PEOPLES NATIONAL BANK OF LEESBURG, VIRGINIA	2,433	•	0			2,433	1230	•	0	
1327	THE UNION NATIONAL BANK OF STREATOR STREATOR, ILLINOIS	2,430	•	722	1044	•	2,107	1290	•	101	1172
1328	MOULTRIE NATIONAL BANK MOULTRIE, GEORGIA	2,425	•	1,654	539	•	342	2034	•	432	927
1329	FIRST NATIONAL BANK OF MAGNOLIA MAGNOLIA, ARKANSAS	2,425	•	0			2,425	1234	•	0	
1330	THE EXCHANGE NATIONAL BANK OF COLUMBIA, MISSOURI	2,418	•	0			2,418	1236	•	0	
1331	THE BANK OF TOKYO OF CALIFORNIA SAN FRANCISCO, CALIFORNIA	2,415	•	575	790	•	541	1848	•	1,299	722
1332	WHEATON NATIONAL BANK WHEATON, ILLINOIS	2,410	•	0			2,410	1237	•	0	
1333	THE LITTLESTOWN NATIONAL BANK LITTLESTOWN, PENNSYLVANIA	2,402	•	258	1003	•	2,145	1284	•	3	
1334	THE MADISON BANK AND TRUST COMPANY MADISON, INDIANA	2,386	•	0			2,386	1238	•	0	
1335	FIRST BANK AND TRUST COMPANY, FOARS, NEW JERSEY	2,384	•	992	658	•	986	1602	•	405	940
1336	SECURITY NATIONAL BANK OF SPRINGFIELD, MASSACHUSETTS	2,383	•	75	1314	•	1,610	1402	•	698	836
1337	EVANSTON TRUST AND SAVINGS BANK EVANSTON, ILLINOIS	2,379	•	0			2,372	1242	•	8	1416
1338	VALLEY BANK AND TRUST COMPANY SOUTH SALT LAKE, UTAH	2,377	•	69	1336	•	1,878	1338	•	430	928
1339	GULF NATIONAL BANK AT LAKE CHARLES LAKE CHARLES, LOUISIANA	2,367	•	1,202	622	•	1,156	1539	•	8	1420
1340	MILFORD TRUST COMPANY MILFORD, DELAWARE	2,362	•	0			2,362	1245	•	0	
1341	THE CEMENT NATIONAL BANK, NORTHAMPTON, PENNSYLVANIA	2,355	•	562	797	•	1,795	1361	•	0	
1342	OAK PARK NATIONAL BANK OAK PARK, ILLINOIS	2,347	•	93	1260	•	2,254	1266	•	0	
1343	THE CITIZENS NATIONAL BANK OF NEW CASTLE, PENNSYLVANIA	2,347	•	0			2,347	1248	•	0	
1344	THE FIRST NATIONAL BANK DES PLAINES, ILLINOIS	2,342	•	529	811	•	887	1645	•	925	785
1345	THE FIRST NATIONAL BANK OF MISSOULA MISSOULA, MONTANA	2,333	•	196	1079	•	2,071	1299	•	66	1225
1346	THE PHILLIPSBURG NATIONAL BANK AND PHILLIPSBURG, NEW JERSEY	2,331	•	136	1163	•	2,083	1294	•	113	1156
1347	THE STATE BANK OF WOODSTOCK WOODSTOCK, ILLINOIS	2,331	•	0			2,328	1250	•	2	1474
1348	THE TALLAHASSEE BANK AND TALLAHASSEE, FLORIDA	2,329	•	506	820	•	1,823	1354	•	0	
1349	THE MERCHANTS AND MANUFACTURERS SHARON, PENNSYLVANIA	2,325	•	0			2,325	1251	•	0	
1350	FLORIDA FIRST NATIONAL BANK VERO BEACH, FLORIDA	2,321	•	0			2,205	1276	•	116	1150

TABLE A
TOTAL TRUST ASSETS AND ASSETS BY TYPE OF ACCOUNT

-IN ORDER BY TRUST DEPARTMENT SIZE-
(AMOUNTS IN THOUSANDS)

TOTAL TRUST ASSET RANK	BANK NAME CITY, STATE	TOTAL TRUST ASSETS AMOUNT	TOTAL TRUST ASSETS PERCENT OF TOTAL	EMPLOYEE BENEFIT ACCOUNTS AMOUNT	EMPLOYEE BENEFIT ACCOUNTS RANK	EMPLOYEE BENEFIT ACCOUNTS PERCENT OF TOTAL	PRIVATE TRUST ACCOUNTS AMOUNT	PRIVATE TRUST ACCOUNTS RANK	PRIVATE TRUST ACCOUNTS PERCENT OF TOTAL	AGENCY ACCOUNTS AMOUNT	AGENCY ACCOUNTS RANK
2426	THE FARMERS AND STOCKMENS CLAYTON, NEW MEXICO	125	*	0			125	2360	*	0	
2427	THE VEEDERSBURG STATE BANK VEEDERSBURG, INDIANA	125	*	17	1529	*	105	2395	*	2	1482
2428	BANKERS TRUST COMPANY ROCKY MOUNT, VIRGINIA	125	*	0			125	2361	*	0	
2429	THE SECOND NATIONAL BANK OF PHILLIPSBURG, NEW JERSEY	125	*	93	1261	*	32	2621	*	0	
2430	COMMERCIAL BANK MIDDLESBORO, KENTUCKY	123	*	0			123	2364	*	0	
2431	PROVIDENT TRUST COMPANY PITTSBURGH, PENNSYLVANIA	123	*	0			123	2365	*	0	
2432	MEMPHIS BANK & TRUST COMPANY MEMPHIS, TENNESSEE	123	*	0			123	2366	*	0	
2433	MONMOUTH TRUST AND SAVINGS BANK MONMOUTH, ILLINOIS	121	*	0			121	2369	*	0	
2434	THE FIRST NATIONAL BANK SYLACAUGA, ALABAMA	121	*	0			121	2368	*	0	
2435	THE FIRST NATIONAL BANK MURPHYSBORO, ILLINOIS	120	*	0			120	2371	*	0	
2436	FIRST EXCHANGE BANK MANNINGTON, WEST VIRGINIA	120	*	0			120	2372	*	0	
2437	CONSOLIDATED BANK AND TRUST COMPANY RICHMOND, VIRGINIA	119	*	0			119	2374	*	0	
2438	ATLANTIC SAVINGS AND TRUST COMPANY SAVANNAH, GEORGIA	119	*	0			119	2373	*	0	
2439	SKOKIE TRUST & SAVINGS BANK SKOKIE, ILLINOIS	118	*	62	1353	*	0			55	1244
2440	LOHRVILLE SAVINGS BANK LOHRVILLE, IOWA	118	*	0			118	2377	*	0	
2441	MORNINGSIDE STATE BANK SIOUX CITY, IOWA	117	*	0			117	2378	*	0	
2442	LINCOLN BANK AND TRUST COMPANY JEFFERSON BOROUGH, PENNSYLVANIA	117	*	0			117	2379	*	0	
2443	THE LIBERTY NATIONAL BANK OF PITTSTON, PENNSYLVANIA	117	*	0			117	2380	*	0	
2444	FIRST STATE BANK CODY, WYOMING	117	*	17	1532	*	101	2407	*	0	
2445	THE FIRST NATIONAL BANK OF DICKENSON DICKINSON, NORTH DAKOTA	116	*	65	1345	*	51	2555	*	0	
2446	THE FIRST NATIONAL BANK OF WEATHERFORD, TEXAS	115	*	0			115	2382	*	0	

IX-7

DEPOSITS OF MERGING BANKS AS A PERCENTAGE OF DEPOSITS OF ALL BANKS
IN INTERVENOR'S TRADING AREA A*
DECEMBER 30, 1967

	Total Deposits	Demand Deposits		Time Deposits		Deposits of U.S. Government	Deposits of State and Local Governments	Deposits of Commercial Banks	Certified and Officers Checks
		Total	IPC	Total	IPC				
	Percent of Area Total, by Type								
Phillipsburg National Bank	1.9	1.7	1.6	2.1	2.1	2.3	1.9	.0	2.5
Second National Bank	1.4	1.2	1.1	1.5	1.5	.8	1.6	.0	.9
Resultant Bank	3.3	2.9	2.7	3.5	3.6	3.1	3.6	.0	3.5

*Area also includes the Reigelsville, Bucks County, Pennsylvania, Office of the Girard Trust Company of Philadelphia. Data for this office, which has the full backing and may draw on the entire resources ($1458 million) of the bank, are not available except for total and I.P.C. Demand and Time Deposits.

Source: Reports of Condition for individual banks, December 30, 1967.

Note: Percentages for individual banks may not add to those for resultant banks due to rounding.

DEPOSIT STRUCTURE OF MERGING BANKS AND OF COMMERCIAL BANKS IN NEW JERSEY, PENNSYLVANIA, AND THE UNITED STATES; 1967

	TOTAL DEPOSITS	DEMAND DEPOSITS		SAVINGS DEPOSITS		DEPOSITS OF U. S. GOVERNMENT	DEPOSITS OF STATE AND LOCAL GOVERNMENTS	DEPOSITS OF COMMERCIAL BANKS	CERTIFIED AND OFFICERS' CHECKS
		TOTAL	IPC	TOTAL	IPC				
	Percent of Total Deposits								
U.S. Commercial Banks	100.0	51.0	38.1	49.0	42.8	1.5	8.6	4.5	2.1
Pennsylvania Commercial Banks	100.0	46.5	37.8	53.5	49.0	1.5	6.1	3.5	.9
New Jersey Commercial Banks	100.0	45.6	37.8	54.3	52.1	1.1	6.8	.8	1.1
Phillipsburg National Bank	100.0	29.3	24.8	70.7	68.3	.8	5.3	-	.8
Second National Bank	100.0	28.4	22.8	71.6	70.2	.4	6.2	-	.4
Resultant Bank	100.0	28.9	24.0	71.1	69.0	.6	5.7	-	.6

SOURCE: Federal Deposit Insurance Corporation, Assets, Liabilities, and Capital Accounts: Commercial and Mutual Savings Bank Report of Call No. 80, June 30, 1967. Reports of Condition of Merging Banks, December 30, 1967.

NOTE: Percentages may not add to 100 due to rounding.

LOANS OF MERGING BANKS AS A PERCENTAGE OF LOANS OF ALL BANKS
IN INTERVENOR'S TRADING AREA A*
DECEMBER 30, 1967

	TOTAL LOANS, GROSS	COMMERCIAL AND INDUSTRIAL LOANS	REAL ESTATE LOANS	LOANS TO FINANCIAL INSTITUTIONS	LOANS FOR PURCHASING SECURITIES	LOANS TO FARMERS	LOANS TO INDIVIDUALS				
							TOTAL	AUTO	OTHER INSTALLMENT	SINGLE PAYMENT	OTHER
	Percent of Area Total, by Type										
Phillipsburg National Bank	2.2	2.5	2.3	.8	-	2.1	2.2	1.9	2.1	2.9	.3
Second National Bank	1.6	1.4	2.3	-	.5	.4	.8	.7	.6	1.5	1.0
Resultant Bank	3.8	3.8	4.6	.8	.5	2.5	3.1	2.6	2.7	4.5	1.8

* Area also includes the Reigelsville, Bucks County, Pennsylvania, office of the Girard Trust Company of Philadelphia. Data for this office, which has the full backing and may draw on the entire resources ($1,458 million) of the bank, are not available.

SOURCE: Reports of condition for individual banks, December 30, 1967.

NOTE: Percentages for individual banks may not add to those for resultant bank due to rounding.

LOAN STRUCTURE OF MERGING BANKS AND INSURED COMMERCIAL BANKS
IN THE UNITED STATES BY DEPOSIT SIZE
DECEMBER 30, 1967

	Total Loans Gross	Commercial and Industrial Loans	Real Estate Loans	Loans to Financial Institutions	Loans to Farmers	Consumer Installment Loans	Single Payment Loans to Individuals
All Insured Commercial Banks	100.0	36.6	24.3	5.9	3.8	15.2	6.2
By Deposit Size							
$10-25 million	100.0	21.8	33.2	1.5	7.7	24.0	7.1
$25-50 million	100.0	24.9	33.3	2.3	3.2	23.0	7.5
$50-100 million	100.0	28.7	31.9	3.2	2.3	20.9	6.8
$100 million and over	100.0	43.3	20.4	7.8	1.3	11.9	5.8
Phillipsburg National Bank	100.0	16.2	53.9	.7	1.1	19.2	8.3
Second National Bank	100.0	12.3	71.8	-	.3	8.2	5.9
Resultant Bank	100.0	14.6	61.4	.4	.8	14.6	7.3

Source: Federal Deposit Insurance Corporation, Annual Report - 1967, p. 181; Reports of Condition of Merging Banks, December 30, 1967

NOTE: Percentages do not add to total due to rounding and deletions.

ASSETS OF MERGING BANKS AS A PERCENTAGE OF ASSETS OF ALL BANKS
IN INTERVENOR'S TRADING AREA A
DECEMBER 30, 1967

	TOTAL ASSETS	CASH, BALANCES WITH OTHER BANKS, ETC.	U. S. GOVERNMENT OBLIGATIONS	STATE AND POLITICAL SUBDIVISION OBLIGATIONS	SECURITIES OF FEDERAL AGENCIES	OTHER SECURITIES	FEDERAL FUNDS SOLD	LOANS AND DISCOUNTS, NET
	Percent of Area Total, by Type [a]							
Phillipsburg National Bank	1.9	1.3	1.6	1.7	.0	1.0	.0	2.2
Second National Bank	1.3	1.8	1.4	.5	.0	5.1	.0	1.6
Resultant Bank	3.2	3.6	3.0	2.2	.0	6.1	.0	3.8

[a] Area also includes the Reigelsville, Bucks County, Pennsylvania, office of the Girard Trust Company of Philadelphia. Data for this office, which has the full backing and may draw on the entire resources ($1,458 million) of the bank, are not available.

Bank premises and fixtures, other real estate, customers' liability to banks on acceptances outstanding, and other assets are not shown.

Source: Reports of condition for individual banks, December 30, 1967.

NOTE: Individual amounts and percentages may not add to totals due to rounding.

DEPOSIT STRUCTURE OF MERGING BANKS AND OF COMPETING BANKS
IN INTERVENOR'S TRADING AREA B
DECEMBER 30, 1967

	Total Deposits	Demand Deposits		Time Deposits		Deposits of U.S. Government	Deposits of State and Local Governments	Deposits of Commercial Banks	Certified and Officers Checks
		Total	IPC	Total	IPC				
	Amount in $ Thousands								
Phillipsburg National Bank	22,358	6,542	5,550	15,816	15,263	185	1,177	-	182
Second National Bank	16,005	4,550	3,648	11,455	11,231	62	998	-	67
Resultant Bank	38,363	11,092	9,148	27,271	26,494	247	2,175	-	249
All Banks	1,105,032	374,179	325,708	730,600	705,442	7763	58,415	450	7001
	Percent of Total Deposits								
Phillipsburg National Bank	100.0	29.3	24.8	70.7	68.3	.8	5.3	-	.8
Second National Bank	100.0	28.4	22.8	71.6	70.2	.4	6.2	-	.4
Resultant Bank	100.0	28.9	24.0	71.1	69.0	.6	5.7	-	.6

DEPOSITS OF MERGING BANKS AS A PERCENTAGE OF DEPOSITS OF ALL BANKS
IN INTERVENOR'S TRADING AREA B
December 30, 1967

	Total Deposits	Demand Deposits		Time Deposits		Deposits of U.S. Government	Deposits of State and Local Governments	Deposits of Commercial Banks	Certified and Officers Checks
		Total	IPC	Total	IPC				
	Percent of Area Total, by Type								
Phillipsburg National Bank	2.0	1.8	1.7	2.2	2.2	2.4	2.0	.0	2.6
Second National Bank	1.5	1.2	1.1	1.6	1.6	.8	1.7	.0	1.0
Resultant Bank	3.5	3.0	2.8	3.7	3.8	3.2	3.7	.0	3.6

Source: Reports of Condition for individual banks, December 30, 1967.

Note: Percentages for individual banks may not add to those for resultant banks due to rounding.

IX-19
LOAN STRUCTURE OF MERGING BANKS AND OF COMPETING BANKS
IN INTERVENOR'S TRADING AREA B
DECEMBER 30, 1967

	Total Loans Gross	Commercial and Industrial Loans	Real Estate Loans	Loans to Financial Institutions	Loans for Purchasing Securities	Loans to Farmers	Loans to Individuals				
							Total	Auto	Other Installment	Single Payment	
	Amount in $ Thousands										
Phillipsburg National Bank	14,643	2,375	7,893	98	-	166	4,031	994	1,828	1,209	79
Second National Bank	10,702	1,320	7,679	-	74	35	1,510	361	516	633	83
Resultant Bank	25,345	3,695	15,571	98	74	201	5,541	1,355	2,344	1,842	162
All Banks	631,756	93,258	321,055	12,185	15,099	7,010	170,692	45,613	84,826	40,253	8,313

Source: Reports of condition for individual banks, December 30, 1967

NOTE: Individual amounts and percentages may not add to totals due to rounding.

IX-20

LOANS OF MERGING BANKS AS A PERCENTAGE OF LOANS OF ALL BANKS
IN INTERVENOR'S TRADING AREA B
DECEMBER 30, 1967

	TOTAL LOANS, GROSS	COMMERCIAL AND INDUSTRIAL LOANS	REAL ESTATE LOANS	LOANS TO FINANCIAL INSTITUTIONS	LOANS FOR PURCHASING SECURITIES	LOANS TO FARMERS	LOANS TO INDIVIDUALS				
							TOTAL	AUTO	OTHER INSTALLMENT	SINGLE PAYMENT	[illegible]
	Percent of Area Total, by Type										
Phillipsburg National Bank	2.3	2.5	2.5	.8	-	2.4	2.4	2.2	2.2	3.0	1.6
Second National Bank	1.7	1.4	2.4	-	.5	.5	.9	.8	.6	1.6	1.6
Resultant Bank	4.0	4.0	4.8	.8	.5	2.9	3.2	3.0	2.8	4.6	1.7

Source: Reports of condition for individual banks, December 30, 1967.

NOTE: Percentages for individual banks may not add to those for resultant bank due to rounding.

COMPOSITION OF REAL ESTATE LOANS OF MERGING BANKS AND OF COMPETING BANKS IN INTERVENOR'S TRADING AREA B
DECEMBER 30, 1967

	Total	Farm	Residential	Nonfarm, Nonresidential
	Amount in $ Thousands			
Phillipsburg National Bank	7,893	184	6,840	869
Second National Bank	7,679	161	6,565	953
Resultant Bank	15,571	345	13,405	1,822
All Banks	321,055	11,213	218,456	91,386
	Percent of Total Real Estate Loans			
Phillipsburg National Bank	100.0	2.3	86.7	11.0
Second National Bank	100.0	2.1	85.5	12.4
Resultant Bank	100.0	2.2	86.1	11.7
All Banks	100.0	3.5	68.0	28.5

Source: Reports of condition for individual banks, December 30, 1967
Note: Individual amounts and percentages may not add to totals due to rounding.

IX-22

Deposits of Merging Banks and of Competing Banks in
Intervenor's Trading Area B
December 30, 1967
(Amount in $ Thousands)

	Total Deposits	Demand Deposits	Time Deposits
Phillipsburg National Bank	22,358	6,542	15,816
Second National Bank	16,005	4,550	11,455
Resultant Bank	38,363	11,092	27,271
All Banks a/	1,105,032	374,179	730,60[illegible]

a/ Data for Riegelsville, Bucks County, Pennsylvania, Office of the Girard Trust Company of Philadelphia are drawn from deposition of Mr. John W. Rhimer, Assistant Treasurer and Manager of the Riegelsville branch of the Girard Trust Company. There is a discrepancy of $249,000 between the figures for demand and time deposits and the total given by Mr. Rhimer.

SOURCE: Reports of Condition for individual banks, December 30, 1967; and Deposition of Mr. John W. Rhimer.

NOTE: Individual amounts may not add to totals due to rounding and to discrepancies in the data.

IX-23

Merging Banks' Shares of Deposits of
All Banks in Intervenor's Trading
Area B
December 30, 1967

	Total Deposits	Demand Deposits	Time Deposits
Phillipsburg National Bank	2.0	1.7	2.2
Second National Bank	1.4	1.2	1.6
Resultant Bank	3.5	3.0	3.7

SOURCE: Reports of Condition for individual banks, December 30, 1967; Data for the Riegelsville, Bucks County, Pennsylvania, Office of the Girard Trust Company of Philadelphia are drawn from deposition of Mr. John W. Rhimer, Assistant Treasurer and Manager of the Riegelsville branch of the Girard Trust Company. There is a discrepancy of $249,000 between the figures for demand and time deposits and the total given by Mr. Rhimer.

NOTE: Percentages for individual banks may not add to those for resultant banks due to rounding.

ASSETS OF MERGING BANKS AS A PERCENTAGE OF ASSETS OF ALL BANKS
IN INTERVENOR'S TRADING AREA B
DECEMBER 30, 1967

	TOTAL ASSETS	CASH, BALANCES WITH OTHER BANKS, ETC.	U. S. GOVERNMENT OBLIGATIONS	STATE AND POLITICAL SUBDIVISION OBLIGATIONS	SECURITIES OF FEDERAL AGENCIES	OTHER SECURITIES	FEDERAL FUNDS SOLD	LOANS AND DISCOUNTS, NET
	Percent of Area Total, by Type[a/]							
Phillipsburg National Bank	2.0	1.8	1.7	1.8	.0	1.1	.0	2.3
Second National Bank	1.4	1.9	1.4	.5	.0	5.6	.0	1.7
Resultant Bank	3.4	3.7	3.1	2.3	.0	6.6	.0	4.0

a/ Bank premises and fixtures, other real estate, customers' liability to banks on acceptances outstanding, and other assets are not shown.

Source: Reports of condition for individual banks, December 30, 1967.

NOTE: Percentages for individual banks may not add to those for resultant bank due to rounding.

IX-28

INTERROGATORY NO. 18

With regard to each officer and/or director described in Interrogatory 17 state the salary or director's fees received for th year 1967, including bonuses and stock options, if any, for services performed in the capacity of officer and/or director.

Phillipsburg National:

Salaries and/or directors fees paid in 1967 to officers and directors of record 3/31/67.

Tirrell, Philip F.	Chairman of Board Trust Officer	$7,783.48
Curry, H. J.	(Asst. President,(Trust Officer Director	$19,134.74
Taborelli, Elizabeth	Ass't. Trust Officer	9,410.
Aiello, Barbara V.	Ass't. Cashier	6,950.
Varga, Joseph G.	Ass't. Cashier	8,830.
Rambo, Sara P.	Ass't. Cashier	6,950.
Kays, Eugene D.	Ass't. Cashier	6,362.82
Stillo, Anthony F.	Consumer Loan Officer	9,010.
Rittenhouse, Charles	Cashier	12,371.55
Beers, Herman L.	Director	940.
Bidwell, G. Lamont	Director	880.
Cane, John J.	Director, Vice-Pres.	960.
Cline, John B.	Director . V C	1,000.
Hajdu, Louis	Director	940.
Meyner, Robert B.	Director & Bank Attorney	3,160.
Vliet, Freeman	Director	340.

Second National:

18. The salaries and directors fees paid to our directors and officers for the year 1967 are:

Harry S.Pursel,President&Director	$ 11,544.61
Lester D.Pursell,Exec V.Pres&Director	12,563.08
Alfred W.Seiss,Director	3,460.00
Thomas B.Armstrong	980.00
William M.Norton,Director	1,040.00
John H.Baker,Director	1,160.00
Harold D.Smith,Director	1,160.00
William C.Gosser,Director	1,160.00
Patsy Tersigni,Director	1,160.00
Richard C.Daubert,Cashier	9,346.15
Robert E.Duckworth,Asst.Vice Pres.	9,159.23
Jess H.Rubert,Asst.Cashier	6,469.62
Clarence A.Karcher,Asst.Cashier	6,500.77
Stanley W.Meixsell,Asst.Cashier	5,379.23

IX-30

1969 NEW JERSEY COMMERCIAL BANK BRANCH APPLICATIONS
AS OF SEPTEMBER 19, 1969

	FILED	PENDING	APPROVED	DISAPPROVED	WITHDRAWN
DISTRICT I					
Bergen	48	15	24	2	4
Essex	11	4	6	-	1
Hudson	1	1	-	-	-
Morris	33	-	19	6	8
Passaic	11	2	5	1	3
Sussex	12	5	3	4	-
Warren	~~3~~	~~1~~	~~2~~	~~1~~	-
Total District I	~~120~~ 117	30	59	14	19
DISTRICT II					
Hunterdon	~~3~~ 4	-	1	~~1~~	1
Mercer	14	4	8	-	2
Middlesex	21	5	11	3	2
Monmouth	30	1	17	6	6
Somerset	9	2	5	2	-
Union	16	6	9	-	1
Total District II	~~94~~ 93	18	51	13	12
DISTRICT III					
Atlantic	9	-	9	-	-
Burlington	12	4	5	1	2
Camden	16	5	11	-	-
Cape May	4	2	2	-	-
Cumberland	4	1	2	1	-
Gloucester	18	3	10	4	1
Ocean	4	1	3	-	-
Salem	4	2	1	1	-
Total District III	71	18	43	7	3
GRAND TOTAL	~~287~~ 283	66	152	34	34

SOURCE: Office Files, Regional Administrator of National Banks
Second National Bank Region

BRANCH APPLICATIONS FILED
IN NEW JERSEY IN 1968

DISTRICT I	NUMBER OF APPLICATIONS
Bergen	7
Essex	1
Hudson	1
Morris	3
Passaic	2
Sussex	2
Warren	6
Total District I	22
DISTRICT II	
Hunterdon	1
Mercer	2
Middlesex	1
Monmouth	3
Somerset	2
Union	1
Total District II	10
DISTRICT III	
Atlantic	0
Burlington	3
Camden	2
Cape May	2
Cumberland	5
Gloucester	4
Ocean	2
Salem	7
Total District III	25
Total	57

Source: Office Records, Regional Administrator of National Banks, Second National Bank Region

COMMERCIAL BANKS IN THE FIRST BANKING DISTRICT
OF NEW JERSEY LISTED BY DEPOSIT SIZE
AS OF JUNE 30, 1969

RANK	NAME AND LOCATION OF BANK	COUNTY	TOTAL DEPOSITS (000 OMITTED)
1	First National State Bank of New Jersey, Newark	Essex	659,591
2	Fidelity Union Trust Company, Newark	Essex	619,613
3	National Newark and Essex Bank, Newark	Essex	579,860
4	Peoples Trust of New Jersey, Hackensack	Bergen	502,531
5	New Jersey Bank (National Association), Clifton	Passaic	438,105
6	The First Jersey National Bank, Jersey City	Hudson	384,238
7	First National Bank of Passaic County, Paterson	Passaic	355,655
8	National Community Bank of Rutherford, Rutherford	Bergen	321,237
9	Citizens National Bank, Englewood	Bergen	187,117
10	Commercial Trust Company of New Jersey, Jersey City	Hudson	169,808
11	Trust Company National Bank, Morristown	Morris	166,723
12	The Trust Company of New Jersey, Jersey City	Hudson	159,425
13	The Hackensack Trust Company, National Association, Hackensack	Bergen	146,909
14	North Jersey National Bank, Jersey City	Hudson	143,832
15	The First National Iron Bank of New Jersey, Morristown	Morris	138,554
16	Bank of Passaic and Clifton, Passaic	Passaic	134,040
17	Montclair National Bank and Trust Company, Montclair	Essex	130,691
18	Citizens First National Bank of Ridgewood, Ridgewood	Bergen	126,459
19	The Prospect Park National Bank, Prospect Park	Passaic	119,157
20	Hudson Trust Company, Union City	Hudson	99,186
21	County Trust Company, Tenafly	Bergen	95,681
22	The National Union Bank of Dover, Dover	Morris	60,932
23	Broadway Bank and Trust Company, Paterson	Passaic	60,592
24	Bank of Commerce, Newark	Essex	59,550
25	The Bank of Sussex County, Franklin	Sussex	46,779
26	The Sussex and Merchants National Bank of Newton, Newton	Sussex	42,741
27	City National Bank, Hackensack	Bergen	42,465
28	The Maplewood Bank and Trust Company, Maplewood	Essex	41,604
29	The First National Bank and Trust Company of Kearny, Kearny	Hudson	39,815
30	The United National Bank of Bergen County, Cliffside Park	Bergen	39,041
31	The Midland Bank and Trust Company, Paramus	Bergen	38,521
32	Peoples National Bank and Trust Company of Belleville, Belleville	Essex	37,309
33	The Chatham Trust Company, Chatham	Morris	34,949
34	Franklin Bank, Paterson	Passaic	34,799
35	The Dover Trust Company, Dover	Morris	33,518
36	The Second National Bank of Orange, Orange	Essex	32,164
37	The Warren County National Bank, Washington	Warren	31,508

NAME AND LOCATION OF BANK	COUNTY	TOTAL DEPOSITS (000 OMITTED)	% OF TOTAL DISTRICT DEPOSITS
Citizens National Bank of Morris County, Succasunna	Morris	31,057	.43
Garfield Trust Company, Garfield	Bergen	29,408	.41
Livingston National Bank, Livingston	Essex	29,272	.41
Pascack Valley Bank and Trust Company, Hillsdale	Bergen	28,610	.40
Fort Lee Trust Company, Fort Lee	Bergen	28,602	.40
The State Bank of North Jersey, Pine Brook	Morris	27,982	.39
The Phillipsburg National Bank and Trust Company, Phillipsburg	Warren	26,722	.37
First National Bank in Fort Lee, Fort Lee	Bergen	26,356	.36
The Bergen County National Bank of Hackensack, Hackensack	Bergen	25,324	.35
The First National Bank of Westwood, Westwood	Bergen	24,432	.34
Bergenfield State Bank, Bergenfield	Bergen	22,671	.31
The Broadway National Bank of Bayonne, Bayonne	Hudson	22,488	.31
The Bogota National Bank, Bogota	Bergen	22,085	.30
Newton Trust Company, Newton	Sussex	22,060	.30
The Wood Ridge National Bank, Wood-Ridge	Bergen	21,415	.30
Community Bank of Bergen County, N.J., Maywood	Bergen	21,266	.29
Broad National Bank, Newark, Newark	Essex	21,128	.29
The Peoples National Bank of Hackettstown, Hackettstown	Warren	19,590	.27
Jersey State Bank, River Edge	Bergen	19,546	.27
Security National Bank, Newark	Essex	18,239	.25
The Second National Bank of Phillipsburg, Phillipsburg	Warren	17,772	.24
The First National Bank of Belvidere, Belvidere	Warren	16,650	.23
Washington Trust Company of Washington, N.J., Washington	Warren	16,295	.22
The Edgewater National Bank, Edgewater	Bergen	15,620	.21
The National Bank of Palisades Park, Palisades Park	Bergen	15,236	.21
Ridgefield Park Trust Company, Ridgefield Park	Bergen	14,504	.20
The First National Bank of North Bergen, North Bergen	Hudson	14,389	.20
The Hardyston National Bank of Hamburg, Hamburg	Sussex	13,364	.18
The National Bank of Sussex County, Branchville	Sussex	13,275	.18
National Bank of Secaucus, Secaucus	Hudson	12,780	.17
Phillipsburg Trust Company, National Association, Phillipsburg	Warren	12,529	.17
The Bank of Bloomfield, Bloomfield	Essex	11,791	.16
The First National Bank of Hope, Hope	Warren	11,781	.16
Suburban Bank of Livingston, National Association, Livingston	Essex	11,666	.16
Millburn - Short Hills Bank, Millburn	Essex	11,146	.15
Franklin Lakes National Bank, Franklin Lakes	Bergen	10,505	.14
Fair Lawn State Bank, Fair Lawn	Bergen	9,933	.13
The Ramapo Bank, Wayne	Passaic	8,750	.12
Madison National Bank, Madison	Morris	8,604	.12
The First National Bank of Blairstown, Blairstown	Morris	7,457	.10

[1577]

RANK	NAME AND LOCATION OF BANK	COUNTY	TOTAL DEPOSITS (000 OMITTED)	% OF TOTAL DISTRI DEPOS
78	Roxbury State Bank, Succasunna	Morris	7,104	.09
79	Essex County State Bank, West Orange	Essex	7,011	.09
80	Peoples National Bank of Sussex County, Sparta	Sussex	6,991	.09
81	Orange Valley Bank, Orange	Essex	6,188	.08
82	Peoples National Bank of Denville, Denville Township	Morris	4,357	.06
83	Bessemer Trust Company, Newark	Essex	3,135	.04
84	First Morris Bank, Morris Township	Morris	783	.01
85	Lakeland State Bank, West Milford Township	Passaic	489	
86	Elmwood State Bank, East Paterson	Bergen	487	
87	The Corporation Trust Company, Jersey City	Hudson	0	
87	Home Trust Company, Hoboken	Hudson	0	
88	Total		7,133,549	99.5

(due to roun

Source of Deposit Figures: Federal Reserve Bank of New York

(Including banks and branches: proposed new branches and proposed new mergers)

1-1-69 ASSETS ($000,000)	IN-COUNTY BANKS	BRANCHES EXISTING	NEW 1969 (as of 10-1-69) APPROVED	PENDING
$ 34	The Warren Co. N/B, Washington[1/]	Hackettstown	Mansfield Twsp.[2/] Washington Twsp.[2/]	
28	The Phillipsburg N/B & T/C	Alpha Lopatcong (Twsp.)	Greenwich Twsp.[3/]	
22	**The Peoples N/B of Hackettstown**	Great Meadows		Hackettstown
18	The First N/B of Belvidere			
19	The Second N/B of Phillipsburg	Phillipsburg		
18	*Washington Trust Co.*	Oxford White Twsp.		
13	The First N/B of Hope			
14	Phillipsburg Trust Co., N.A.	Pohatcong Twsp.		Franklin Twsp.
7	The First N/B of Blairstown			
	OUT-OF-COUNTY BANKS			
182	Trust Co. N/B, Morristown, Morris Co.			Harmony Twsp.
	MERGER PROPOSAL			
$ 676	*National Newark & Essex Bank, Newark, Essex County, N.J. to merge with Washington Trust Co. ($16MM) (Approved on October 9, 1969 by Comptroller of the Currency)			
558	**Peoples Trust Co. of New Jersey, Hackensack, Bergen County, N.J. to merge with Peoples N/B of Hackettstown			

1/Resultant bank of merger between First National Bank of Washington and Hackettstown National Bank. Merger consummated on October 14, 1968

2) Branch applications filed in 1968 and approved in 1969

3) Mansfield Township is a relocation and not a filing.

SOURCE: Assets - Polk's Bank Directory March 1969

Banks and Existing Branches - F.D.I.C., Operating Banking Offices, January 1969.

New 1969 - Office Records, Regional Administrator of National Banks, Second National Bank Region

Merger Proposals - New Jersey Bankers Association

1-1-69 (Existing banks and branches, proposed new branches and proposed new mergers)

ASSETS ($000,000)	IN-COUNTY BANKS	BRANCHES EXISTING	NEW 1969 (as of 10-1-69) APPROVED	PENDING
$182	Trust Company N/B, Morristown	Chester	Randolph Twsp.	
		Denville		
		Florham Park		
		Madison		
		Morris Plains		
		Morris Twsp.		
		New Vernon		
		Parsippany - Troy Hills		
161	The First Nat'l Iron Bank, Morristown	Brookside	Hanover Twsp.	
		Butler		
		Cedar Knolls	Jefferson Twsp.	
		Convent Station		
		Hanover		
		Kinnelon		
		Long Valley		
		Newfoundland (Seasonal Agency)		
		Pompton Plains		
		Rockaway		
		Sterling		
		Whippany		
68	The National Union Bank of Dover	Jefferson Twsp	Boonton (Town)	
		Mine Hill	Randolph Twsp.	
		Randolph Twsp	Rockaway Twsp.	
		Riverdale		
		Victory Gardens		
		Wharton		
32	The Chatham Trust Co.			
32	Citizens N/B of Morris Co., Succasunna	Budd Lake		
		Landing		
		Netcong		

(Continued)

MORRIS COUNTY, NEW JERSEY

ASSETS ($000,000)	IN-COUNTY BANKS	BRANCHES EXISTING	NEW 1969 APPROVED	NEW 1969 PENDING
$.36	The Dover Trust Co.	Mount Arlington	Randolph Twsp. Rockaway Twsp.	
31	The State Bank of North Jersey, Pine Brook	Boonton Boonton Twsp. Lincoln Park	Pequannock Twsp.	
.9	Madison N/B		Florham Park (Boro)	
8	Roxbury State Bank, Succasunna	Chester		
5	Peoples N/B of Denville		Denville Twsp.	
NEW	First Morris Bank, Morristown			
NEW	Par-Troy State Bank, Parsippany			
PROPOSED	Pompton Valley Bank, Pequannock Twsp.			
	OUT-OF-COUNTY BANKS			
$754	Fidelity Union Trust Co., Newark, Essex County		Florham Park (Boro) Hanover Twsp.	
558	Peoples Trust of New Jersey, Hackensack, Bergen County		Hanover Twsp. Lincoln Park (Boro)	
516	New Jersey Bank, N.A., Clifton, Passaic Co.		Randolph Twsp.	
418	First N/B of Passaic Co, Paterson, Passaic Co.		Pequannock Twsp.	
146	Bank of Passaic & Clifton, Passaic, Passaic Co.		Pequannock Twsp.	
73	Broadway Bank & T/C, Paterson, Passaic Co.		Pompton Plains	

SOURCE: Assets - Polk's Bank Directory March 1969

Banks and Existing Branches - F.D.I.C., Operating Banking Offices, January 1969.

New 1969 - Office Records, Regional Administrator of National Banks, Second National Bank Region

Merger Proposals - New Jersey Bankers Association

SUSSEX COUNTY, NEW JERSEY

1-1-69 (Existing banks and branches, proposed new branches and proposed new mergers)

ASSETS ($000,000)	IN-COUNTY BANKS	BRANCHES EXISTING	NEW 1969 (as of 10-1-69) APPROVED	PENDING
$ 46	*Sussex & Merchants N/B of Newton	Andover Boro Hopatcong (Boro) Sparta		
49	*** The Bank of Sussex Co., Franklin	Andover Twsp. Franklin Hampton Twsp. Montague Twsp. Sussex Vernon		Green Twsp.
24	Newton Trust Co.	Stanhope		
14	The Hardyston N/B of Hamburg	Ogdensburg Stockhola	Lafayette Twsp.	
15	The N/B of Sussex County, Branchville	Augusta	Stillwater Twp.	
7	**Peoples N/B of Sussex Co., Sparta	Wantage Twsp.		
	OUT-OF-COUNTY BANKS			
516	New Jersey Bank, N.A., Clifton, Passaic County			Byram Twsp.
182	Trust Co. N/B, Morristown, Morris Co.		Fredon Twsp.	Byram Twsp. Sandyston Twsp.
32	Citizens N/B of Morris Co., Succasunna			Byram Twsp.

(Continued)

MERGER PROPOSALS

$676 * National Newark & Essex Bank, Newark, Essex County, N.J.
to merge with
Sussex & Merchants N/B, Newton ($46MM)
Newton, Sussex County, N.J.

516 ** New Jersey Bank, N.A., Clifton, Passaic County, N.J.
to merge with
Peoples N/B of Sussex County ($7MM)
Sparta, Sussex County, N.J.

350 *** National Community Bank, Rutherford, Bergen County, N.J.
to merge with
The Bank of Sussex County ($49MM)
Franklin, Sussex County, N.J.

SOURCE: Assets - Polk's Bank Directory March 1969

Banks and Existing Branches - F.D.I.C., Operating Banking Offices, January 1969.

New 1969 - Office Records, Regional Administrator of National Banks, Second National Bank Region

Merger Proposals - New Jersey Bankers Association

HUNTERDON COUNTY, NEW JERSEY

1-1-69 (Existing banks and branches, proposed new branches and proposed new mergers)

ASSETS ($000,000)	IN-COUNTY BANKS	BRANCHES EXISTING	NEW 1969 (as of 10-1-69) APPROVED	PENDING
$ 64	The Hunterdon Co. N/B of Flemington, Raritan Township	Clinton (Union Twsp.) Frenchtown High Bridge Flemington Holland Twsp. Stockton White House ~~Station~~ (Readington Twsp.) Lambertville Raritan Twsp.		
31	The Flemington N/B & T/C	Ringoes (East Amwell Twsp.) Flemington		
25	First Clinton N/B	Lebanon Pittstown		
25	The First N/B of Milford	Glen Garden	Kingwood Twsp.	
12	Hunterdon County T/C, ~~Gelffin~~ Annandale (Clinton Twsp.)	~~Annandale~~ Califon Oldwich (Tewksbury Twsp.)		
6	The Citizens N/B of Bloomsbury			
6	*Lambertville N/B			

MERGER PROPOSAL

390 * First Trenton N/B, Mercer County, Trenton, N.J.
to merge with
Lambertville N/B ($6121)

SOURCE: Assets - Polk's Bank Directory March 1969
Banks and Existing Branches - F.D.I.C., Operating Banking Offices, January 1969.
New 1969 - Office Records, Regional Administrator of National Banks,

Commercial Banking Facilities by Community, 1-1-69,

and New Branch Proposals 1-1-69 to 10-1-69.

SOURCE: Population - The New Jersey Economic Review, November-December 1968

1-1-69 Offices - F.D.I.C., Operating Bank Offices January 1, 1969

New Branches - Office Records, Regional Administrator of National Banks, Second National Bank Region.

HUNTERDON COUNTY	POPULATION 1960	POPULATION 7/1/68	% CHANGE 1968/1960	OFFICES OPEN 1/1/69	NEW BRANCHES APPROVED
Alexandria Twp	1,629	1,920	17.9		
Bethlehem Twp	1,090	1,250	14.7		
Bloomsbury Boro	838	920	9.8	1	
Califon Boro	777	990	27.4	1	
Clinton Town	1,158	1,490	28.7	1	
Clinton Twp	3,770	4,860	28.9	/	
Delaware Twp	2,485	3,140	26.4		
East Amwell Twp	1,981	2,440	23.2	1	
Flemington Boro	3,232	4,060	25.6	43	-
Franklin Twp	1,777	2,120	19.3	1	
Frenchtown Boro	1,340	1,470	9.7	1	
Glen Gardner Boro	787	850	8.0	1	
Hampton Boro	1,135	1,330	17.2		
High Bridge Boro	2,148	2,480	15.5	1	
Holland Twp	2,495	3,490	39.9	1	
Kingwood Twp	1,841	2,160	17.3		1
Lambertville City	4,269	4,590	7.5	2	
Lebanon Boro	880	960	9.1	1	
Lebanon Twp	2,841	3,420	20.4		
Milford Boro	1,114	1,370	23.0	2	
Raritan Twp	4,545	6,710	47.6	2	
Readington Twp	6,147	7,340	19.4	/	
Stockton Boro	520	580	11.5	1	
Tewksbury Twp	1,908	2,530	32.6	/	
Union Twp	1,717	1,880	9.5	1	
West Amwell Twp	1,683	2,180	29.5		
Total	54,107	66,530	23.0		

ORRIS COUNTY	POPULATION 1960	POPULATION 7/1/68	% CHANGE 1968/1960	OFFICES OPEN 1/1/69	NEW BRANCHES APPROVED	NEW BRANCHES PENDING
oonton Town	7,981	9,660	21.0	2	1	
oonton Twp.	1,998	2,620	31.1	1		
utler Boro	5,414	6,750	24.7	1		
atham Boro	9,517	10,430	9.6	2		
atham Twp	5,931	7,750	30.7	1		
hester Boro	1,074	1,400	30.4	1		
hester Twp.	2,107	3,520	67.1	-		
nville Twp	10,632	13,470	26.7	1	1	
ver Town	13,034	15,940	22.3	5		
st Hanover Twp	4,379	6,310	44.1	1		
orham Park Boro	7,222	8,450	17.0	1	2	
nover Twp	9,329	11,160	19.6	1	3	
rding Twp	2,683	3,470	29.3	1		
fferson Twp.	6,884	10,990	59.6	1	1	
nnelon Boro	4,431	6,430	45.1	1		
ncoln Park Boro	6,048	8,360	38.2	1	1	
dison Boro	15,122	17,260	14.1	4		
ndham Boro	2,371	3,240	36.7	1		
ndham Twp	2,256	3,090	37.0	-		
ne Hill Twp	3,362	3,850	14.5	1		
ntville Twp	6,772	10,280	51.8	-		
rris Twp	12,092	17,580	45.4	-		
rris Plains Boro	4,703	6,120	30.1	1		
rristown Town	17,712	21,190	19.6	6		
untain Lakes Boro	4,037	4,510	11.7	1		
unt Arlington Boro	1,246	1,950	56.5	1		
unt Olive Twp	3,807	6,550	72.1	1		
tcong Boro	2,765	3,090	11.8	1		
rsippany-Troy Hills Twp	25,557	51,650	102.1	4	1	
ssaic Twp	5,537	7,190	29.9	1		
quannock Twp	10,553	14,040	33.0	1	4	1
ndolph Twp	7,295	11,390	56.1	1	4	
verdale Boro	2,596	3,010	15.9	1		
ckaway Boro	5,413	6,700	23.8	1		
ckaway Twp	10,356	14,830	43.2	1	2	
xbury Twp	9,983	13,980	40.0	1		
ctory Gardens Boro	1,085	1,240	14.3	1		
shington Twp	3,330	5,620	68.8	1		
rton Boro	5,006	6,180	23.5	1		
Total	261,620	361,250	38.1			

SUSSEX COUNTY	POPULATION 1960	POPULATION 7/1/68	% CHANGE 1968/1960	OFFICES OPEN 1/1/69	NEW BRANCHES APPROVED
Andover Boro	734	860	17.2	1	
Andover Twp	2,177	2,810	29.1	1	
Branchville Boro	963	1,040	8.0	1	
Byram Twp	1,616	3,010	86.3		
Frankford Twp	2,170	2,560	18.0	1	
Franklin Boro	3,624	4,240	17.0	1	
Fredon Twp	804	1,320	64.2		1
Green Twp	854	1,340	56.9		
Hamburg Boro	1,532	2,000	30.5	1	
Hampton Twp	1,174	1,880	60.1	1	
Hardyston Twp	2,206	2,990	35.5	/	
Hopatcong Boro	3,391	4,770	40.7	1	
Lafayette Twp	1,100	1,410	28.2		1
Montague Twp	879	1,240	41.1	1	
Newton Town	6,563	8,190	24.8	3	
Ogdensburg Boro	1,212	2,210	82.3	1	
Sandyston Twp	1,019	1,140	11.9		
Sparta Twp	6,717	10,120	50.7	2	
Stanhope Boro	1,814	2,940	62.1	1	
Stillwater Twp	1,339	1,830	36.7		1
Sussex Boro	1,656	1,920	15.9	1	
Vernon Twp	2,155	3,750	74.0	/	
Walpack Twp	248	360	45.2		
Wantage Twp	3,308	4,190	26.7	1	
Total	49,255	68,120	38.3		

arren County	Population 1960	Population 7-1-68	% Change 1960-1968	Offices Open 1-1-69	New Branches Approved	Pending
lamuchy Twp	973	1,170	20.2			
pha Boro	2,406	2,850	18.5	1		
lvidere Town	2,636	2,940	11.5	1		
airstown Twp	1,797	2,000	11.3	1		
anklin Twp	1,729	1,950	12.8			1
elinghuysen Twp	845	950	12.4			
eenwich Twp	1,397	1,580	13.1		1	
ckettstown Town	5,276	9,760	85.0	3		1
rdwich Twp	370	420	13.5			
rmony Twp	2,039	2,340	14.8			1
pe Twp	833	1,010	21.2	1		
dependence Twp	1,509	1,970	30.6	1		
owlton Twp	1,442	1,670	15.8			
berty Twp	760	850	11.8			
patcong Twp	2,703	3,220	19.1	1		
nsfield Twp	2,130	3,210	50.7		1/ 1	
ford Twp	1,657	1,740	5.0	1		
haquarry Twp	63	70	11.1			
illipsburg Town	18,502	18,510	0	4		
hatcong Twp	3,543	3,960	11.8	1		
shington Boro	5,723	6,460	12.9	2		
shington Twp	3,055	3,620	18.5		1	
ite Twp	1,832	2,040	11.4	1		
Total	63,220	74,290	17.5			

1/ The Mansfield Town. approval is a relocation of one of the existing Hackettstown Town. branches.

REPORT BY THE

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

to the

Comptroller of the Currency, under the Bank Merger Act

(12 U.S.C. 1828(c)), on the competitive factors

involved in the proposed merger of

Washington Trust Company of Washington, N.J.,
Washington, New Jersey

into

National Newark & Essex Bank, Newark, New Jersey

I. THE PROPOSAL

National Newark & Essex Bank (Newark Bank), with deposits of $600 million, proposes to merge with Washington Trust Company of Washington, N.J. (Washington Trust), with deposits of $15.8 million, under the charter and title of the former. Incident to the proposal, the head office and two branches of Washington Trust would become branches of the resulting institution.

At present, Newark Bank operates 11 branches in Newark and 20 offices in 10 different communities of Essex County.

II. THE COMMUNITIES

Newark, population 399,500, the seat of Essex County, population 966,960, is an industrial and transportation center as well as a leading financial city. It is the State's largest city and the headquarters of the State's three largest commercial banks, the Prudential Insurance Company, and a number of other large financial institutions.

Washington, population 5,450, is located near the south-central section of Warren County about 50 miles west of Newark and 70 miles southeast of Philadelphia. It is primarily a residential community; residential expansion has been steady in recent years and it is expected to continue. There are several industries in the area which employ about 2,000 persons, but the largest concentration of industry is at Phillipsburg, the county's largest municipality, situated about 12 miles southwest of Washington. Although Warren County has attractive future prospects, most of the growth will probably center around the existing population concentrations and planned industrial parks; since 1960, the fastest growing municipality has been Hackettown, located

about 10 miles northeast of Washington. With the establishment of three branches approved, but not yet in operation, the population per banking office in Washington County will be about 3,500, among the lowest of all markets in the State.

III. COMPETITION BETWEEN THE TWO INSTITUTIONS

In view of the disparity in size between the two banks and the distance between banking markets--about 40 miles separate their nearest offices--there is believed to be little or no competition now existing between the participants. Although there is potential for meaningful competition, even this appears remote due to the sparcely settled region and the limitations of the recently enacted revised banking statutes with regard to bank and branch "protection" for communities with fewer than 7,500 persons.

IV. OTHER COMPETITIVE EFFECTS

Consummation of the proposed merger would have no effect on competition in the Greater Newark Market where Newark Bank currently ranks third, holding about 17.5 per cent of total deposits. Washington Trust ranks sixth among the nine banks serving the Warren County market, holding about 10 per cent of total deposits.

There are 82 commercial banks currently operating in the newly established First Banking District, with aggregate deposits of about $7.3 billion. Newark Bank is the third largest in this region, holding about 8.3 per cent of total deposits and operating 31, or 6.7 per cent, of the 461 banking offices. The proposed merger would increase Newark Bank's percentage by 0.2 per cent and would not change the bank's ranking in the First District.

The entry of Newark Bank into Warren County is not likely to have any adverse effect on other banking institutions now operating in that area. These banks range in size from $6.3 million to $29.2 million.

V. CONCLUSION WITH RESPECT TO COMPETITIVE FACTORS

The proposed merger of Washington Trust Company of Washington, N.J., Washington, New Jersey, into National Newark & Essex Bank, Newark, would have no adverse competitive effects.

NOTE

As required by the Bank Merger Act (12 U.S.C. 1828(c)), this report is limited to a report on the competitive factors involved, and is not a recommendation as to whether the application should be approved or disapproved. The term "no adverse competitive effects" as used in the above conclusion is defined at 12 C.F.R. 250.182 (34 Fed. Reg., July 10, 1969, p. 11414); Fed Res. Bulletin, July 1969, p. 610.

THE ADMINISTRATOR OF NATIONAL BANKS

WASHINGTON, D.C. 20220

Office of the
Comptroller of the Currency

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION OF NATIONAL NEWARK & ESSEX BANK, NEWARK, NEW JERSEY, TO MERGE WITH WASHINGTON TRUST COMPANY, WASHINGTON, NEW JERSEY, UNDER THE CHARTER AND WITH THE TITLE OF THE FORMER.

STATEMENT

On July 28, 1969, National Newark & Essex Bank, Newark, New Jersey, applied to the Comptroller of the Currency for permission to merge with Washington Trust Company, Washington, New Jersey, under the charter and with the title of the former.

National Newark & Essex Bank, the charter bank, was organized in 1804, and received its national charter in 1865. This bank operates 30 branches in Essex County and has total resources of $684 million.

Essex County is located in the heavily industrialized northeast portion of New Jersey. The county has more than 1,000 manufacturing workers per square mile and is an important factor in the industrial production of New Jersey and the entire New York-Northeastern New Jersey area. In addition to the considerable manufacturing, wholesale and retail activities, the county's 127 square miles contain many fine residential communities.

The City of Newark, which is only 12 miles from Manhattan, is located in the densely populated southeastern section of the county. The city is, and has long been, the state's financial center and hub of industrial activity. In recent years the complex known as Port Newark and Port Elizabeth has developed to the extent that it is now the containership capital of the country. Newark Airport, which is presently being expanded, is one of the country's major air terminals.

Essex County supports 15 commercial banks with 82 branches. These competing banks have total assets of $2.1 billion and loans exceeding $1.4 billion. Notwithstanding this competition, the charter bank enjoys

Washington, New Jersey, headquarters of the merging bank, is located in Warren County about 50 miles west of Newark. The merging bank, which was chartered in 1926, operates two branches and has total resources of $18 million. It is the sixth largest of the nine banks in Warren County.

The population of Washington is about 6,500. The area is one of the more important agricultural counties in New Jersey, particularly for dairy products. Industrial activity is also significant with several light industries employing about 2,000 persons. Industrial growth is expected to continue at an even faster rate as the completion of the new interstate highways will make the Warren County area more accessible to the major eastern markets.

Management of both the charter and the merging banks is rated good. The charter bank has a management development program to provide for replacement of executive officers. Provisions for management succession have not been made in the merging bank.

Consummation of the proposed merger will serve the convenience and needs of the Warren County area. At present, the merging bank has a lending limit of approximately $125,000. After consummation of this merger the resulting bank will be able to offer a lending limit in excess of $4 million to customers in Warren County in addition to the sophisticated services of a large metropolitan based bank.

Consummation of the proposed merger will not have an adverse effect on competition. At present, competition between the applicant banks is de minimus as their closest offices are 40 miles apart. Approval of the proposed merger will stimulate competition in Warren County by providing an additional source of banking services to the larger businesses in the merging bank's service area.

Applying the statutory criteria to the proposed merger, we conclude that it is in the public interest and the application is, therefore, approved.

William B. Camp
Comptroller of the Currency

Dated: [illegible]

ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

Department of Justice
Washington, D.C. 20530

RWMcL:CLW
60-111-1726

September 24, 1969

Honorable William B. Camp
Comptroller of the Currency
Treasury Department
Washington, D. C. 20220

Dear Mr. Camp:

This is a reply to your letter of July 30, 1969, requesting a report, pursuant to the provisions of Section 18(c) of the Federal Deposit Insurance Act, on the competitive factors involved in the proposed merger of Washington Trust Company, Washington, New Jersey, into National Newark & Essex Bank, Newark, New Jersey.

1. The Banks

National Newark & Essex Bank ("National Bank"), organized in 1804, operates its head office and ten of its thirty branches in Newark. Its twenty other branch offices are located throughout Essex County. An additional branch office in Essex County is expected to be opened in September, 1969. As of December 31, 1968, National Bank had total deposits of $600 million (including IPC demand deposits of $311.8 million) and net loans and discounts of $391.5 million, consisting primarily of commercial and industrial loans, real estate loans and loans to individuals. Its net current operating income in 1968 was $10.0 million, considerably above the average for the previous four years of $7.0 million.

Washington Trust Company ("Washington Trust"), organized in 1926, maintains its head office in Washington, Warren County, and operates one branch office each in Oxford and White Townships, also in Warren County. As of December 31, 1968, Washington Trust had total deposits of $15.8 million

(including IPC demand deposits of $3.8 million) and net loans and discounts of $7.2 million, consisting primarily of real estate loans and loans to individuals. This bank's net current operating income in 1968 was $155,000, almost double the average for the previous four years of $82,000.

2. The Communities

The principal impact of the proposed merger will be in Warren County in northwestern New Jersey. Warren County (estimated population 74,000) is one of the outstanding agricultural counties in New Jersey, with dairy products constituting a large portion of farm revenues. The county is also experiencing rapid industrial growth, however, with over two-thirds of the county's workers being employed in manufacturing.

Washington (estimated population 6,460), lies in the southeastern portion of Warren County and is the county's third largest municipality. Major employers in Washington include American Can Company, Vikon Tile Corporation and Wyandotte Chemical Corporation.

3. Effect on Existing Competition

The nearest offices of National Bank and Washington Trust are forty miles apart, with a number of banks in the intervening area. It would appear that the proposed merger would not eliminate any significant existing competition between the two banks.

4. Effect on Potential Competition

Recent legislation in New Jersey broadens geographic areas for bank expansion beyond the former limits of county lines by dividing the State into three banking districts.1/

1/ P.L. 1968 Chap. 415, effective July 17, 1969.

Under this law, banks may branch within an entire district. However, the law retains community-wide home office protection against de novo branching and provides branch office protection in communities of less than 7,500 persons.

The major population centers of Warren County, Phillipsburg, Hackettstown and Washington, each have home offices of commercial banks and are thus protected against de novo branching by outside banks. No other communities exist in Warren County with populations in excess of 7,500. While a number of communities in Warren County are open to de novo branching, the rural orientation of these communities would appear to make them unlikely choices for de novo expansion by National Bank.

The recent broadening of the geographic boundaries of permissible branch office operation by commercial banks in New Jersey has induced substantial market extension activity, both by de novo branching and by merger. We consider it important that the largest banks in a district enter a new market area through de novo branching, or in the alternative through merger with one of the smaller banks in the area rather than through merger with a leading local bank. A large bank entering de novo or through a small acquisition can be expected to compete vigorously to enhance its position in the local market. At the same time, it is desirable to avoid eliminating leading local banks, as they can be expected to be more able to compete locally with new offices of large entering banks, or may possess the potential of competing with existing large banks on a district-wide basis through affiliation with one another in new banking institutions.

However, in this case, while National Bank is the third largest bank in the First Banking District, Washington Trust is the smaller of two banks operating offices in Washington,

and the sixth largest of 9 banks operating offices in Warren County.2/ Therefore, this acquisition of one of the smallest banks in the First Banking District does not seem likely to have a significantly adverse effect on potential competition.

A summary of this report is attached.

Sincerely yours,

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division

2/ F.D.I.C. Summary of Accounts & Deposits in Commercial Banks, June 30, 1968.

SUMMARY OF THE REPORT OF THE DEPARTMENT OF JUSTICE ON THE COMPETITIVE FACTORS INVOLVED IN THE PROPOSED MERGER OF WASHINGTON TRUST COMPANY, WASHINGTON, NEW JERSEY, INTO NATIONAL NEWARK & ESSEX BANK, NEWARK, NEW JERSEY

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The recent broadening of the geographic boundaries of permissible branch office operation by commercial banks in New Jersey has induced substantial market extension activity, both by de novo branching and by merger. We consider it important that the largest banks in a district enter a new market area through de novo branching, or in the alternative through merger with one of the smaller banks in the area rather than through merger with a leading local bank. A large bank entering de novo or through a small acquisition

can be expected to compete vigorously to enhance its position in the local market. At the same time, it is desirable to avoid eliminating leading local banks, as they can be expected to be more able to compete locally with new offices of large entering banks, or may possess the potential of competing with existing large banks on a district-wide basis through affiliation with one another in new banking institutions.

However, in this case, while National Bank is the third largest bank in the First Banking District, Washington Trust is the smaller of two banks operating offices in Washington, and the sixth largest of 9 banks operating offices in Warren County. Therefore, this acquisition of one of the smallest banks in the First Banking District does not seem likely to have a significantly adverse effect on potential competition.

POLITICAL SUBDIVISIONS
OF NEW JERSEY
COUNTIES AND MUNICIPALITIES
LEGEND
NEW YORK
SUSSEX
PASSAIC
WARREN
HUNTERDON
SOMERSET
MIDDLESEX
MERCER
MONMOUTH
OCEAN
BURLINGTON
CAMDEN
GLOUCESTER
SALEM
ATLANTIC
CUMBERLAND
CAPE MAY
DELAWARE BAY
PENNSYLVANIA
DELAWARE
ATLANTIC OCEAN
STATE OF NEW JERSEY
DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF STATE & REGIONAL PLANNING

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No. 1093

In the Supreme Court of the United States

OCTOBER TERM, 1969

UNITED STATES OF AMERICA, APPELLANT

v.

PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY, SECOND NATIONAL BANK OF PHILLIPSBURG, AND WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

JURISDICTIONAL STATEMENT

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OPINION BELOW

The opinion of the district court (App. A, *infra*) is not yet reported.

JURISDICTION

The judgment of the district court (App. B, *infra*) was entered on October 20, 1969; a notice of appeal to this Court was filed on November 28, 1969, and amended on December 2, 1969. The jurisdiction of the Court is conferred by Section 2 of the Expediting Act (15 U.S.C. 29). *United States* v. *Third National Bank in Nashville*, 390 U.S. 171; *United States* v. *Philadelphia National Bank*, 374 U.S. 321.

STATUTES INVOLVED

Section 7 of the Clayton Act, 38 Stat. 731, as amended, 64 Stat. 1125, 15 U.S.C. 18, provides in pertinent part:

> That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

Section 18(c) of the Bank Merger Act of 1966, as amended, 80 Stat. 7, 12 U.S.C. (Supp. IV) 1828(c), provides in pertinent part:

> (5) The responsible agency shall not approve—
>
> * * * * *
>
> (B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.
>
> In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the

existing and proposed institutions, and the convenience and needs of the community to be served.

* * * * *

(7) (B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of [Title 15], the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).

QUESTIONS PRESENTED

1. Whether in an antitrust action challenging a proposed merger of banks located in a community in which the banking business is predominantly local the court may properly refuse to consider the merger's probable effect on competition in that community because, on the basis of evidence of general social and economic integration, it deems the relevant geographic market to be a broad multi-community area.[1]

2. Whether, in such an action, the court's consideration of the "convenience and needs of the community to be served" is legally insufficient if the "community" whose "needs" are considered is narrower than the relevant geographic market in which the anticompetitive effects of the merger are measured.

[1] As explained *infra*, p. 19, n. 17, we reserve the right to urge additionally, if probable jurisdiction is noted, that the court's rejection of commercial banking as a relevant line of commerce was also error.

3. Whether, in any event, the court below erred in its determination of the convenience and needs issue by failing adequately to consider whether the same benefits could be achieved by less anticompetitive means.

STATEMENT

This civil antitrust action brought under Section 7 of the Clayton Act (15 U.S.C. 18) is the first "small bank" merger case to be fully litigated under the Bank Merger Act of 1966 (12 U.S.C. 1828(c)). Like the defendant banks here, most commercial banks in the United States—11,798 of 13,630 or 86.6 percent—have deposits of less than 25 million dollars.[2]

The defendant banks are the two largest commercial banks in Phillipsburg, New Jersey, a city of 30,000 situated across the Delaware River from Easton, Pennsylvania, at the northeastern tip of the Census Bureau's Allentown-Bethlehem-Easton, Pennsylvania ("Lehigh Valley") standard market statistical area ("SMSA"). They agreed to merge in April 1967. Under the agreement, Phillipsburg National Bank, with total deposits of 22.4 million dollars, assets of 23.9 million dollars, and loans and discounts of 14.5 million dollars as of December 30, 1967, was to absorb its physically proximate competitor, Second National Bank, with total deposits of 16 million dollars, assets of 17.3 million dollars, and loans and

[2] Federal Deposit Insurance Corp., *Summary of Accounts and Deposits in All Commercial Banks*, 7 (1968). See generally Tr. 320–321, 364, 474, 606; GX 48.

discounts of 10.5 million dollars, as of December 30, 1967[3] (GX–35).

1. The Proceedings

Application for approval to merge was made to the Comptroller of the Currency on May 1, 1967. The application stated:

> Analysis of the participating banks' business shows that they are presently in *direct competition against each other* in many ways as might be expected from their similarity in size and location of offices.[4] * * *

Pursuant to the Bank Merger Act of 1966, the Attorney General submitted a report to the Comptroller advising that the proposed merger would have a significantly adverse effect upon competition in commercial banking in Phillipsburg and Easton, its twin city, and their environs (the area encompassed by a six-

[3] Second National's main office is 100 feet diagonally from Phillipsburg National's main office, and its sole branch faces across a suburban highway from one of Phillipsburg National's two branches (Tr. 646–647; Appendix A to Plaintiff's Trial Brief).

As of June 30, 1969, Phillipsburg National's deposits were up 19 percent to 26.7 million dollars; loans and discounts were up 22 percent to 17.8 million dollars; assets were up 20 percent to 28.7 million dollars. On that date, Second National's deposits were up 12 percent to 17.9 million dollars; loans and discounts were up 23 percent to 12.9 million dollars; assets were up 13 percent to 19.6 million dollars. Polk's *World Bank Directory*, New Jersey–57 (September 1969).

[4] Application for Approval to Merge at p. 33 (emphasis supplied). Copies of this document, of the reports to the Comptroller of the Currency hereafter referred to, and of the Comptroller's decision have been lodged with the Clerk of this Court.

mile radius). The Federal Reserve Board similarly concluded (on p. 4 of its report to the Comptroller):

> Consummation of the proposed merger * * * would eliminate a significant degree of * * * competition. * * * [B]anking alternatives in Phillipsburg would be reduced from three to two. * * *. The overall competitive effect * * * would be substantially adverse.

Moreover, the Federal Deposit Insurance Corporation reported (p. 2):

> The consummation of this merger would do damage to the competitive climate, particularly in the Phillipsburg sector of the service area. The resulting bank would be approximately three times the size of the remaining bank, and the banking choices would be reduced from three to two. * * * [I]t is concluded that the effect would be unfavorable.

Following a hearing on August 14, 1967, however, the Comptroller reasoned that the market definitions on which these reports were based "only * * * point out where the merging banks now do business. * * * [They do] not truly indicate with what other banks * * * they are competing" (Decision of the Comptroller of the Currency at p. 3). The Comptroller selected most of the Lehigh Valley as the relevant geographic market and, evaluating competition from thirty-four finance companies, thirteen savings and loan institutions and insurance companies as well as nearly forty commercial banks in this broad area (*id.* at 3, 7, 8), determined that any adverse competitive impact of the merger would be insignificant (*id.* at 10). Moreover, he concluded that the merger would

enable the resultant bank to hire more specialized management personnel and provide opportunity for expansion (*id.* at 9). The merger was approved by the Comptroller on December 18, 1967.

The United States, acting under Section 15 of the Clayton Act to enjoin a violation of Section 7 of that Act, filed suit on January 16, 1968, and the statutory stay enjoining consummation of the merger issued (see 12 U.S.C. 1828(c)(7)(A)). The Comptroller was made a party intervenor. After an eleven-day non-jury trial, the district court held the proposed merger lawful and entered judgment for the defendants. The present appeal followed and, by order of the district court, the stay enjoining consummation of the merger remains in effect pending "disposition of the cause."

2. The Facts[5]

Phillipsburg National and Second National are the third and fifth largest commercial banks headquartered in Phillipsburg-Easton (GX–26; Tr. 87, 418, 678, 1152). Their deposit and loan statistics indicate that both banks draw about 85 percent of their overall business from the twin cities and adjacent suburbs ("Phillipsburg-Easton and environs") (GX–19, 22; Tr. 722, 725, 795–796. See, also, Tr. 633, 653).

Both in Phillipsburg-Easton and throughout the Lehigh Valley, banking remains locally oriented[6] even though general shopping and labor mobility have increased substantially in recent years.[7] For example,

[5] See, also, *supra*, pp 4–5.

[6] Tr. 107, 115, 203, 307–308, 313, 326, 331, 357–358, 426–427, 470, 488, 898, 1218.

[7] Tr. 174, 214, 278, 280–281, 629, 699, 893, 894, 902, 1087, 1128, 1214, 1336, 1363.

nearly every family living in Phillipsburg banks with one of the city's banks (Tr. 595). Parochial customer banking habits (Tr. 867, 1062, 1191, 1194, 1217-1218; cf. Tr. 875), a tenor of conservative banking (Tr. 126, 148, 316, 474, 834, 878), and "friendly relationships" among area bankers (Tr. 470, 1267) contribute "an undertone of a degree of intent to stay within certain areas" (Tr. 520). Like many banks in small communities, most Lehigh Valley banks have a high proportion of savings accounts, and real estate mortgages dominate their lending (Tr. 302, 321, 474). Much of the valley's demand for trust services is attracted to large Philadelphia and New York banks; those desiring such services are willing to shop farther afield (Tr. 333, 390, 575, 1277). Trust services are available, however, from most of the local banks (IX–4). Easton National Bank, for example, handles more than 45 million dollars in both personal and corporate trusts (Tr. 424), and Nazareth National Bank holds more than 20 million dollars (Tr. 303).

Within Phillipsburg-Easton and environs, the present two largest banks—Easton National and Lafayette Trust Bank, both located in Easton—together hold about 56 percent of the total commercial bank deposits and 63 percent of the demand deposits, while operating 37 percent of the banking offices (GX–26, 27). As a result of the proposed merger, however, Phillipsburg National would advance to second place, holding 24 percent of the total deposits. The share of the cities' commercial banking concentrated in the two largest banks would increase about 9 percent—to 65 percent of the total. The share concentrated in

the three largest banks would increase 10 percent—to nearly 80 percent of the total. Of the sixteen banking offices in Phillipsburg-Easton, the number that would be operated by the two largest banks would increase from seven to ten (see GX–26, GX–27; Tr. 87, 418, 678, 1152). And, because new entry is virtually precluded by restrictive branch banking statutes in New Jersey and Pennsylvania, decrease in this concentration cannot be anticipated.[8]

[8] See Tr. 659; Tr. of Motion to Continue Stay (October 20, 1969) 4, 20, 21; GX–89. See, generally, Smith & Greenspun, *Structural Limitations on Bank Competition*, 32 Law & Contemp. Prob. 40, 45–50 (1967).

When the complaint was filed, New Jersey law prohibited the merger of banks located in different counties, and restricted branch banking to the county in which the parent bank was located (N.J. Stat. Ann. § 17:9A–19(B) (1963)). Additionally, a "home office protection" proviso precluded branching into cities in which another bank had its home office or into communities of less than 7,500 population in which a bank was already located (N.J. Stat. Ann. § 17:9A–19(B)(3) (1963)). Entry into such communities could be effected only through merger with a bank in the community by a bank outside the community but in the same county.

Under a new banking statute, enacted on January 17, 1969, and effective July 17, 1969, the State is subdivided into three banking districts (N.J. Stat. Ann. § 17:9A–19(F) (Supp. 1969)), of which Phillipsburg is in the first. District-wide *de novo* branching and merger are authorized, subject to the retained "home office protection" proviso. (N.J. Stat. Ann. §17:9A–19(B)(3) (Supp. 1969)).

No New Jersey community in the government's proposed geographic market is open to *de novo* branching under the new statute; entry by merger is now possible for some 90 banks located outside the market in the first banking district. See Tr. of Motion to Continue Stay, 20, 22.

Pennsylvania banking law is similarly restrictive. See Tr. 1157–1159.

The ten years preceding their proposed merger was a period of parallel, "healthy" growth for Phillipsburg National and Second National (Tr. 850, 1060, 1284; GX 13, 38, 83). With the hiring of new, younger personnel and specialists (*e.g.*, Tr. 830, 835), assets and deposits doubled and loans and discounts trebled (Tr. 6–9). Neither bank did any substantial commercial or industrial lending, although both made, or participated in, local government loans (as to which normal lending limits are inapplicable) of more than 100,000 dollars (Tr. 25, 842, 844, 846–847, 874).[9] Both banks remained consumer-oriented, "full-service banks" (Application for Approval to Merge at pp. 30, 31. *Contra,* Tr. 834). Phillipsburg National, for example, conducted the local grammar school-savings programs (Tr. 778, 841) and, when other banks were refusing, offered both FHA and VA home financing (Tr. 91, 780). Consumer installment lending increased rapidly until late 1966, when the directors ordered loan officers to concentrate again on real estate mortgages (Tr. 1176, 1178).[10]

The proposed merger was announced the following spring. This "best logical step" (Tr. 1235), it was contended, would enable the merged bank to supply demand for commercial loans, such as inventory

[9] The defendants' lending limits are approximately $100,000 for each. The existing larger lending limits in Phillipsburg-Easton are: Easton National Bank, $587,000; Northampton National Bank, $369,000; Lafayette Trust Bank, $224,000; Nazareth National Bank, $294,000 (GX–46; Tr. 1132, 1157).

[10] Defendants argued below that standards governing commercial bank mergers were largely inapplicable because most of their money "is tied up in mortgages". See Defendants' pretrial brief at p. 3.

financing and auto dealers' floor planning, which neither bank individually could supply because of low lending limits.[11] The merged banks eventually could afford more specialists, and hence offer fuller services, particularly in the trust area.

Virtually no alternatives to merger had been attempted. Practices routinely used by other nearby banks to increase lending limits (*e.g.*, Tr. 145–146, 1311, 1325) were not adopted by either bank: simple alteration of bookkeeping procedures was not attempted (Compare Tr. 889 with Tr. 1161); directors refused to substitute stock for cash dividends (Compare Tr. 996 with Tr. 1311); issuance of new capital stock was rejected because "if both banks should attempt to sell [new stock] they would only be fighting for the dollar themselves, one against the other which would not do anybody any good." (Tr. 559; compare Tr. 1494. See, also, Tr. 1145–1157.)

Nor were efforts made to rectify alleged managerial shortcomings. For example, at the Comptroller's hearing held four months after the merger application was filed, one Second National officer testified that one of the reasons his bank had not attempted to obtain new management for the prior *year-and-one-half* was because merger discussions with Phillipsburg National were taking place during that time.[12] At trial, one

[11] An automobile dealer who is also a director of Second National testified, however, that "there is hardly any bank that handles a car dealer" (Tr. 1231, 1243). Another of defendants' witnesses, an expert on finance companies, testified that high risk was one reason small banks did not compete for automobile financing (Tr. 1036).

[12] Tr. of Comptroller's Hearing at 79; Plaintiff's Pretrial Brief at 29.

Phillipsburg National officer acknowledged that merger would not affect the character of the bank's business (Tr. 878), adding that because of increased business, "I can see where if we weren't merged * * * we would just have to hire somebody * * * [w]hether he was a specialist or not." (Tr. 888. Compare Tr. 889–890, with Tr. 1457.)

Although seven other banks are headquartered in Warren County, neither Phillipsburg National nor Second National individually gave "any consideration to contacting any other banks in Warren County with respect to the prospects of merging with one of those banks * * *" (Tr. 994–995).

3. The District Court's Decision

In dismissing the complaint, the district court held that the merger would not be anticompetitive in the broad geographic market it deemed relevant, and that any anticompetitive effect was in any event clearly outweighed by the convenience and needs of the community.

Treating the product market first, the court recognized that "commercial banking" has been identified in all previous bank merger decisions of this Court as an appropriate line of commerce, but decided that a "detailed analysis of all the competitive banking services offered to the public by the merging banks is necessary in each case" (App. A, *infra* p. 3a). While conceding that "[t]he approach adopted may not be orthodox," the court deemed it appropriate because in light of the small size of the defendant banks, "this is not the usual bank merger case" (App. A,

infra, p. 11a). The court excluded from its product market services not offered to any great degree by the defendants as well as services "in which competition from many sources [such as finance or loan companies, insurance companies, etc.] is so widespread that no question of significant diminution of competition by the merger could be raised" (App. A, *infra*, pp. 11a–12a). The lines of commerce selected by the court included checking accounts, savings accounts, certificates of deposit, personal and consumer installment loans and commercial loans of less than 100,000 dollars. Trust services, small real estate mortgage loans, auto dealer financing and commercial and industrial loans in excess of 100,000 dollars were excluded (App. A, *infra*, pp. 10a–11a).

Turning to the question of the appropriate geographic market, the court rejected both of the government's proposed alternatives of Phillipsburg-Easton and environs or Phillipsburg and environs (App. A, *infra*, pp. 13a–14a).[13] It chose instead an area slightly smaller (but excluding Allentown) than the Allentown-Bethlehem-Easton SMSA. The area selected encompasses 13 towns and cities, including Bethlehem in Northampton County and 5 cities and towns in Bucks County, Pennsylvania, and the southwest half of Warren County and the northwest portion

[13] The advisory banking agencies treated Phillipsburg as a relevant banking sector (see *supra*, p. 6) and the government introduced evidence below on banking localization and concentration in Phillipsburg. After the court made clear its rejection of Phillipsburg as a relevant market (see Tr. 1556), the government relied in its Trial Brief solely upon Phillipsburg-Easton. See Plaintiff's Trial Brief, pp. 10–18.

of Hunterdon County, New Jersey (App. A, *infra*, pp. 15a–16a). The government's statistical showing of the localized nature of the existing banking business was deemed not conclusively significant (App. A, *infra*, p. 18a); the court relied instead on evidence of population mobility tending toward general economic integration of the broader area (App. A, *infra*, pp. 16a–18a), and, apparently, the court's expectation that the increased size and strength of the merged banks would permit them to offer services in a wider area than at present (see App. A, *infra*, p. 28a).

The court held that the government had failed to establish that the merger "would have any measurable anticompetitive effect" in this broad area (*ibid.*). Moreover, the court stated that under applicable New Jersey law there were "many locations [in the New Jersey part of the geographic market] where either a new bank or a branch bank could be established" (App. A, *infra*, p. 27a).[14]

The court then found that the potential ability of the merged bank to supply one segment of its geographic market—Phillipsburg—with commercial loans of more than 100,000 dollars and trust services (services excluded from the court's lines of commerce) clearly outweighed any conceivable anticompetitive effect (App. A, *infra*, p. 41a). As to less anticompetitive alter-

[14] This statement is apparently based on an erroneous reading of the amended New Jersey banking statutes (compare App. A, *infra*, pp. 25a, 27a, with *id.* at n. 4). As discussed *supra*, p. 9, n. 8, the new law retains the "home office protection" proviso of the old, including its restriction against entry into communities of less than 7,500 population in which a bank's principal *or branch* office is already located.

natives to merger which might achieve these benefits, the court said only that "tentative" exploration of obtaining qualified officers to specialize in loans and trust services was properly abandoned because of cost (App. A, *infra,* pp. 30a–31a) and that meeting local loan needs through participation loans had "disadvantages" (App. A, *infra,* p. 39a).

THE QUESTIONS ARE SUBSTANTIAL

Section 7 of the Clayton Act forbids any acquisition the effect of which "in any line of commerce in any section of the country * * * may be substantially to lessen competition, or tend to create a monopoly." The Bank Merger Act of 1966 precludes a merger that would violate the Clayton Act "unless * * * the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served." A correct appraisal of the anticompetitive effects of a proposed merger is necessary for comparison with any benefit to the convenience and needs of the community. "To weigh adequately one of these factors against the other requires a proper conclusion as to each." *United States* v. *Third National Bank in Nashville,* 390 U.S. 171, 183. To meet the "intentionally heavy" [15] burden of the convenience and needs defense, the defendant banks must establish the unavailability of alternative solutions, because an anticompetitive merger needlessly sacrifices the community's interest

[15] 112 Cong. Rec. 2444, 89th Cong., 2d Sess. (1966) (remarks of Congressman Reuss).

in competition if "reasonably able businessmen" could have taken other remedial measures. 390 U.S. at 189-190. If curing alleged deficiencies in banking services without merger or through a less anticompetitive merger is feasible, then resolution of these problems at an unnecessarily high cost in terms of competitive injury does not "clearly outweigh" the merger's anticompetitive effects. Moreover, the district court findings should specifically relate beneficial consequences to less desirable results of the merger (*id.* at 186, 187); a holding that the merger should be approved simply because the resulting bank would be a better bank and could render better banking services is inadequate (*id.* at 188).

We believe that these principles, developed by this Court in cases involving mergers by larger, metropolitan banks, are equally applicable to mergers by smaller banks, in smaller communities, serving principally the needs of small customers. The district court believed, however, that small bank merger cases require different treatment. By first postulating a broad geographic market which minimized anticompetitive effects, and then measuring the convenience and needs of the narrowest possible community, the court approved a significantly anticompetitive bank merger without requiring a clear demonstration of benefits outweighing the loss of competition.

1. The district court held that a multi-community region which is economically and socially integrated constitutes the only appropriate geographic market for assessing the anticompetitive impact of the merger. It refused to consider the effect of the merger in the

more local market proposed by the government on the basis of substantial evidence in the record.

Commercial banking is an industry generally characterized by a high degree of customer loyalty in which medium-sized and smaller customers, in particular, tend to be reluctant to change banks for fear of jeopardizing credit relationships. This, plus "[t]he factor of convenience," effectively localizes competition. *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 358–359. For this reason, evidence of general social and economic integration of a region should not be dispositive, though in a given case it may be relevant in interpreting statistics so as to reflect the fact that not all accounts found in a market may be properly allocable to it. See *United States* v. *Provident National Bank*, 280 F. Supp. 1, 7, 13 (E.D. Pa.). The appropriate geographic market, however, remains an area where the effect of the merger will be direct and immediate, *Philadelphia Bank, supra*, at 357; *United States* v. *Pabst Brewing Co.*, 384 U.S. 546, 549, and market share percentages normally are the most important indication of both the location and the magnitude of a merger's competitive effect.

In this case the clear preponderance of evidence introduced by all parties tended to establish that the great bulk of the defendants' banking business is drawn from Phillipsburg-Easton and that the banking business is highly localized in these and nearby communities (see *supra*, pp. 7–8). Hence, we contend, Phillipsburg-Easton and environs is an appropriate section of the country for Section 7 purposes. The possibility that the resulting bank might choose to

compete more vigorously in the future with banks serving peripheral areas, relied on by the district court, does not controvert the government's proof that in Phillipsburg and Easton the immediate effect of the proposed merger would be elimination of competition between two substantial competitors and a substantial increase in an already high degree of concentration. Because the merger would yield a bank with approximately 24 percent of a concentrated market, it falls within precedent holding such horizontal acquisitions violative of Section 7.[16]

The district court apparently assumed that proven anticompetitive effects in one core market can be offset, under Section 7, by potentially procompetitive effects in increasingly distant concentric markets—a concept of countervailing power rejected by this Court in *Philadelphia Bank, supra*, 374 U.S. at 370. If anticompetitive effects in Phillipsburg and Easton can thus be offset by speculative procompetitive consequences in communities as far as 17 miles distant, across State lines, or in different banking districts, (see App. A, *infra*, pp. 15a–16a), the result would be that every bank in Phillipsburg-Easton, or similar communities, could merge without violating Section 7,

[16] *United States* v. *Third National Bank of Nashville*, 390 U.S. 171 (33.6% and 4.8%); *United States* v. *Von's Grocery Co.*, 384 U.S. 270 (7.5% combined); *United States* v. *Pabst Brewing Co.*, 384 U.S. 546 (4.49% combined); *United States* v. *Aluminum Co. of America (Rome Cable)*, 377 U.S. 271 (27.8% and 1.3%); *United States* v. *Philadelphia National Bank*, 374 U.S. 321 (30% combined); *United States* v. *Provident National Bank*, 280 F. Supp. 1 (E.D. Pa.) (10% combined).

upon the testimony of their officers' intention to expand service areas.[17]

2. If, as we contend, the district court erred in assessing competitive impact, the case should, at a minimum, be remanded for reconsideration of asserted benefits to the community. See *Nashville, supra,* 390 U.S. at 183–184. The district court's recitation that "any conceivable anticompetitive effect of the merger is clearly outweighted by * * * the needs and convenience of the community to be served" (App. A., *infra,* p. 41a) is not an adequate substitute for the specific balancing this Court has mandated. But there are more fundamental difficulties with the court's analysis of this issue.

By assessing competitive impact in a broad market, the court was able to conclude that the anticompetitive effect would be insubstantial; turning to the needs of the community, however, it assessed the present availability of important services—large loans and trust services—only in the single local community of

[17] If probable jurisdiction is noted, we reserve the right to urge that the court also erred in rejecting the government's proposal of commercial banking as a relevant line of commerce. This Court held in *Philadelphia Bank, supra,* at 356, that commercial banking is a relevant line of commerce in bank merger cases, and that precedent has been followed in each of this Court's cases decided under the 1966 Act. Indeed, although some 20 percent of the trial record here was devoted to investigation among commercial banks and other financial institutions as to each service offered by the defendants, the court was ultimately obliged to measure the impact of the merger in a universe including only commercial banks because one of the relevant services was checking accounts, a service offered only by commercial banks. Because the error therefore did not affect the result in this case, we do not urge it as a question independently warranting plenary review.

Phillipsburg. We believe that the plain language of the Bank Merger Act of 1966, and the balancing test which it dictates, require that purported needs which the merger will serve be assessed in an area which is no narrower than the area in which anticompetitive effects are measured. If an area is a relevant geographic market in which to measure competitive impact, it must be because the banks therein offer reasonably available alternatives to customers throughout the area for the competition to be sacrificed by the merger. It follows that the needs of persons in any community within the area for banking services can accurately be determined only by reference to the availability of services in the entire area.

In the present case, in particular, the district court seriously misapplied the 1966 Act, we submit, by relying on "needs" in Phillipsburg which can be satisfied in Easton—the immediately adjacent town located within the court's own relevant geographic market. The record shows without contradiction that in Easton alone, four banks have lending limits equal to or substantially in excess of that of the proposed resulting bank (see *supra,* p. 10, n. 9). Two Easton banks have larger trust departments which, so far as the record shows, are fully capable of meeting any existent demand for trust services (see *supra,* p. 8). Accordingly, if the government is correct in urging that the competitive effect of this merger should be tested in Phillipsburg-Easton and environs, we submit that, in weighing the benefits to the community against the anticompetitive effects of the merger, the district court should be required to take properly into

account the availability in Easton of the services for which a purported need exists.[18]

The appropriate relationship between the statutory concepts of "section of the country" and "community to be served" has not heretofore been considered by this Court. The decision below indicates there is a need—and provides the occasion—for clarification of that relationship.

3. Even assuming *arguendo* that the district court could properly determine convenience and needs by reference only to Phillipsburg, the ultimate holding on this issue is deficient as a matter of law because of the court's failure adequately to consider less anticompetitive methods of achieving the same benefits.

The only references to less anticompetitive alternatives in the court's opinion are the rejection of the government's argument that large loans can, as in the past, be effectuated through participation with other banks (App. A, *infra,* p. 39a), and the statement that defendants made only "tentative exploration of the possibility of obtaining qualified bank officers" (App. A, *infra,* pp. 30a–31a). Practical alternatives urged by the government—such as cash dividend retention and capital alterations—had enabled other nearby banks to expand their services without merging (see p. 11, *supra*). Internal development by the defendant banks

[18] Even if Phillipsburg is an appropriate geographic submarket for measuring the competitive effect, the court's analysis of convenience and needs was inadequate. A far more compelling showing of need than was made below would be necessary to outweigh clearly the loss of competition resulting from the merger of the two largest banks in the community, reducing the banking choices available to its citizens from three to two.

of the allegedly needed services, therefore, seemed reasonably feasible, though perhaps less attractive to the defendants than merger. The court's failure to evaluate the practicality of these alternatives suggests that the convenience and needs of the defendants, rather than of the community, were controlling.

Finally, the trial court erred by failing to weigh, as the government urged, the possibility of less anticompetitive mergers against the proposed merger. Merger with any of seven smaller banks operating in Warren County (in which the defendants are the two largest banks) was never considered by either defendant (Tr. 994–995). Recognizing that the ready availability of anticompetitive merger can seriously weaken any incentive to pursue alternatives that would preserve or enhance competition, this Court in *Nashville* indicated that less anticompetitive mergers are among the alternatives which must be explored before a merger which violates Section 7 can be justified under the 1966 Act as providing offsetting benefits. See 390 U.S. at 191–192. The district court's opinion reveals no consideration at all of this alternative.[19]

[19] Among the less anticompetitive alternatives which the district court should consider on remand is the possibility, under the new New Jersey statute (see *supra*, p. 9, n. 8), of a merger by one of the defendants with a bank in another city in the newly-created first banking district.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

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JANUARY 1970.

APPENDIX A

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Civil No. 56–68

UNITED STATES OF AMERICA, PLAINTIFF,

v.

THE PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY AND THE SECOND NATIONAL BANK OF PHILLIPSBURG, DEFENDANTS,

and

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR

Opinion Filed: October 14, 1969

APPEARANCES

United States Department of Justice, by Robert C. Weinbaum, Esq., and Eugene T. Austin, Esq., for the United States of America.

Meyner & Wiley, Esqs., by Robert B. Meyner, Esq., and Thomas D. Hogan, Esq., for Phillipsburg National Bank and Trust Company.

Carpenter, Bennett & Morrissey, Esqs., by Sylvester C. Smith, Jr., Esq., and Michael S. Waters, Esq., for Second National Bank of Phillipsburg.

Philip L. Roache, Jr., Esq., for The Comptroller of the Currency.

SHAW, U.S.D.J.

This action is brought by the United States pursuant to Section 15 of the Clayton Act (15 U.S.C. 25) to restrain a proposed merger of the defendant banks which, if consummated, is alleged to be a violation of Section 7 of the Act (15 U.S.C. 18). Phillipsburg National Bank and Trust Company (PNB) and The Second National Bank of Phillipsburg (SNB) have entered into an agreement to merge. The merger has been approved by the Comptroller of the Currency who, by leave of Court, has intervened in this action in support of the proposed merger.

The principal office of each bank is located in the City of Phillipsburg, New Jersey, and each is engaged in interstate commerce. PNB operates two branch offices, one in the Borough of Alpha, New Jersey, and the other in Lopatcong, New Jersey. SNB operates one branch office in the City of Phillipsburg.

Section 7 of the Clayton Act is applicable to bank mergers. *U.S.* v. *Philadelphia National Bank,* 374 U.S. 321, 335–349 (1963). The question presented under Section 7 of the Clayton Act is whether the effect of the merger "may be substantially to lessen competition" within the product market where the defendant banks operate. If the answer is in the affirmative, the merger must be restrained unless it is shown "that the anticompetitive effects . . . are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served." 12 U.S.C. 1828(c)(5)(B).

The burden of proof rests upon plaintiff to establish by a preponderance of the evidence the likelihood that competition may be substantially lessened in the relevant product market if the merger is permitted. If the probability of such effect in the relevant product

market is established, the burden of proof then rests upon the defendants and the intervenor to establish by a preponderance of evidence that any anticompetitive effects are clearly outweighed in the public interest by the service the resultant bank can offer in serving the convenience and needs of the community. Evaluation of effect upon competition that may result from the merger requires examination of the line of commerce involved and the appropriate geographic product market in which the banks are competitive.

LINE OF COMMERCE

Commercial banking has been identified as a line of commerce in the banking industry. *Philadelphia National Bank, supra.* See also *U.S.* v. *Third National Bank of Nashville,* 390 U.S. 171 (1968); *U.S.* v. *First National Bank and Trust Co. of Lexington,* 376 U.S. 665 (1964). The Supreme Court in *Philadelphia* stated:

> We have no difficulty in determining the "line of commerce" . . . in which to appraise the probable competitive effects of appellees' proposed merger. We agree with the District Court that the cluster of products (various kinds of credit) and services (such as checking accounts and trust administration) denoted by the term "commercial banking," . . . composes a distinct line of commerce. *Id.* at 356.

While the term "commercial banking" may be used as a general description of a line of commerce in bank merger cases, a detailed analysis of all of the competitive banking services offered to the public by the merging banks is necessary in each case. Areas of substantial and effective competition in the market in which the merging banks operate are not necessarily the same in each case. As the Supreme Court

noted in *Philadelphia,* supra, "Some commercial banking products or services are so distinctive that they are entirely free of effective competition from products or services of other financial institutions; the checking account is in this category." *Id.* at 356. To the extent that a bank offers substantial banking services in effective competition with other banks and other financial institutions, the effect of a merger upon such competition, regardless of the source, must be considered. It is the line of commerce consisting of products and services offered which must be examined.

This requires a comparison of the products and services offered by competing banks and other financial institutions operating in the market so that the areas of distinct and effective competition may be delineated. Where, for instance, the competition is not substantial or effective, that circumstance is a factor to be weighed in the evaluation of probable lessening of competition. But, on the other hand, where a bank is rendering a substantial banking service in effective competition with competing banks and other financial institutions, the effect of a lessening of present or imminently potential competition cannot be ignored in giving effect to Section 7 of the Clayton Act. In this case it seems from the record before the Court that in many of the banking services offered by the defendant banks there is very virulent and wide-spread competition from other banks and other financial institutions. The merger would have no substantial anticompetitive effect upon such services. The most significant of these services may be classified as time and savings deposits, conventional real estate loans, and financing of automobiles, appliances and business equipment. The demand deposit or checking account is a distinct commercial

banking service free from competition except in the banking industry. In a lesser degree the same is true of short- and long-term commercial and industrial loans. Trust services offered are so insignificant that defendant banks cannot be presently considered as competitive in that field.

Comparatively speaking PNB and SNB rank in terms of assets and deposits among the small banks in the nation. PNB has total assets of $23,861,000 and SNB has assets of $17,255,000. The total assets of the resultant bank after merger would be $41,116,000. The total deposits in the merged banks would be $25,345,000. The lending limit on a single loan of PNB is $120,326. The lending limit of SNB on a single loan is $131,468. The lending limit of the resultant bank after merger could be expected to approach $250,000.[1]

William Paul Smith, a senior economist in the Office of The Comptroller of the Currency, after examining exhibits in evidence stated, "They definitely do show that the banks involved here are in absolute terms small. They show that these banks do relatively little of certain types of business, particularly industrial and commercial lending." There is a preponderance of evidence that supports this conclusion. In terms of function the defendant banks are more comparable to savings institutions than to large commercial banks.

[1] The figures on assets, deposits and lending limits have been furnished as of the end of 1967. Lending limits have been computed on the basis of 10% of capital and surplus, undivided profits and reserves as approved by the Comptroller. The banks, however, have fixed lending limits on the basis of 10% of capital and surplus which, as to PNB, would be approximately $90,000 at the end of the year 1967 and $80,000 for SNB. The banks have employed the method of computing lending limits on the basis of 10% of capital and surplus.

Nevins Dennis Baxter, an eminently qualified economist, stated:

> Well, they are fairly small commercial banks which are located in Phillipsburg, and do a business in which they compete with a large number of financial institutions. They are largely concerned with the borrowing or receiving of and lending money, and the activities of these banks really make them much more, in my opinion, like savings institutions than like so many of the larger commercial banks.
> I would like to refer to the defendants' Exhibit No. 4 to indicate the ratios of these banks, the factors that these banks concentrate on are quite different from all the banks in the United States. For example, for Phillipsburg National Bank under 10 per cent of the assets was in commercial and industrial loans, and under 8 per cent for the Second National Bank, as compared with 19.6 per cent for all banks in the nation.
> On the other hand, they emphasize real estate loans, mortgages, much more heavily than do average banks in the nation. 33 per cent for Phillipsburg National Bank, 44 per cent for Second National Bank and only 13 per cent in the nation, and on the deposit side the emphasis is much more heavily on time and saving deposits than it is on demand deposits. Both banks are up at 56 per cent as compared with only 41 per cent for banks in the nation as a whole. That is Table D–4 that I was referring to.

Professor Franklin Edwards, called as an expert by the government and testifying as a qualified economist, emphasized the demand deposit (checking account) and commercial and industrial lending, both short- and long-term, as unique features of commercial banking service. He placed particular emphasis upon loans to business men, particularly "to

very small or just small business men, say a business man of under $200,000 or $250,000 of assets." Describing the type of business loans commercial banks made to the small business man, he stated:

> Well, they probably make both short and long-term loans. The short-term loans would be more in the area of working capital, loans for inventory purposes, we'll say, and the long-term loans might be in modernization of plant, expansion, term loans, these types of things.

Among the features that may be characterized as unique in the services rendered by a commercial bank are the acceptance of demand deposits for checking accounts, and the short- and long-term commercial and industrial loans for working capital, equipment and inventory. Though the defendant banks offer these commercial banking services, an analysis of deposits and loans indicate that they function more substantially like savings institutions. Upon comparison with demand deposits, it appears that the percentage of time and savings deposits is high. The capacity of a commercial bank to generate credit to meet the business needs of the community varies according to its demand deposits. It seems that a high percentage of demand deposits and a high percentage of commercial and industrial loans go hand in hand. The higher the volume of demand deposits, the greater is the potential for expansion of credit in the form of commercial and industrial loans. Accordingly, the quantity of funds that can be pumped back to meet the *current* credit needs of the business community is dependent upon the volume of demand deposits which a bank holds. Time and savings deposits as in the case of savings banks are employed primarily for mortgage and other long-term loans. The same is true with

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respect to savings and loan associations in the field of mortgage loans.

The activity of the defendant banks in the field of services unique to commercial banking is very limited. This may be illustrated by comparison of deposits and loans with those of Girard Trust Company, a large commercial bank in Philadelphia:

Percentage of Demand Deposits of Total Deposits

	Percent
Girard	58.8
PNB	29.3
SNB (corrected 28%**)	22.8

**G–40 erroneously used IPC demand deposits $3,648,000 rather than total demand deposits $4,550,000. Hence the percentage should be slightly higher, approximately 28%.

Percentage of C&I Loans of Total Loans

	Percent
Girard	72.6
PNB	16.2
SNB	12.3

Percentage of Time and Savings Deposits of Total Deposits

	Percent
Girard	41*
PNB	71
SNB	72

*The total deposits of Girard as listed in D–20 omitted a number and is incorrect. The correct figure should read $1,289,941,000.

Considerable and persuasive evidence has been offered by the defendant banks and the intervenor to establish virulent and wide-spread competition for the savings dollar, conventional mortgage loans, individual and dealer automobile financing, dealer and individual financing of appliances, equipment and commercial inventory. This competition comes in part from the banks located not only in close proximity to Phillipsburg but also from many others located a considerable distance from Phillipsburg. It also comes in substantial part from savings and loan associations, pension funds, mutual funds, government bonds, insurance companies and finance companies. Banks compete with savings and loan associations, pension funds, mutual funds, insurance companies and govern-

ment bonds for the savings dollar. Hence, the bank savings account and certificate of deposit is not a unique bank service free from effective competition. Savings and loan associations and insurance companies compete with the banks for real estate mortgage loans. Finance companies compete for dealer and individual automobile financing and for financing of appliances and equipment.

The area in and from which the defendant banks encounter highly competitive and effective competition from a host of competitors for the products and services above mentioned is broad, extending radially at least 25 miles from Phillipsburg in some instances and farther in others. Distant entry into the market for substantial commercial and industrial loans ($100,000 and over), floor plan financing of automobile dealers, financing large stocks of commercial inventory and industrial and commercial equipment and appliances seems to be attributable to a lack of capacity of local banks in the Phillipsburg area to extend the substantial credit required. The same is true in a lesser degree with respect to mortgage loans in excess of $80,000, primarily sought for industrial development. It seems, however, that the field of home owner mortgage loans can be adequately serviced by the banks in Phillipsburg and those located within relatively short distances from Phillipsburg if participation of savings and loan associations with banks in this market is considered. Competition here will not be affected adversely by the merger.

As previously indicated, an efficient trust service has not been developed by the defendant banks or by any others in the immediate area with minor exceptions such as the branch bank of Girard Trust Company of Philadelphia located in Riegelsville, Pennsylvania. While it is true that the defendant banks offer

some trust service together with other banks such as The Easton Bank and Trust Company in Easton, Pennsylvania, and Nazareth National Bank and Trust Company, Nazareth, Pennsylvania, and a few others, the capacity and expertise to operate the kind of a trust department which could service substantial trust accounts is so limited that it is inadequate to serve the needs of the community.

If the geographic area of competition were drawn to include competition with all of the banking services which the defendant banks offer, it would be so unduly broad as to be meaningless in any evaluation of impact upon competition by the merger. It seems to the Court that the better approach in defining the line of commerce is to single out those products and services which are not only unique to commercial banking, but also those where the banks in the relevant geographic market are directly and effectively competitive. Parenthetically, it may be noted that while there is wide-spread competition to entice the savings dollar by banks and many other institutions, it is arguable, however, that the convenience factor dictates that a relatively limited area should be considered for this particular service and that it should be included in the relevant line of commerce. The Court concludes that the appropriate line of commerce in this particular case should consist of those products and services labeled as checking accounts, savings accounts, certificates of deposit, personal loans, consumer installment loans, and commercial and industrial loans. Home mortgage loans have not been included because the record before the Court indicates that there are so many sources of funds for this type of loan that the merger could have no appreciable effect upon any potential mortgagor or group.

The approach here has been to select only those products and services as the line of commerce in which the impact of the merger upon competition, if any, is likely to be felt. It is definitely not likely to be felt in trust department service, small real estate mortgage loans, automobile dealer financing, large scale commercial inventory financing, and in commercial and industrial loans in excess of $100,000. The need for more bank participation to afford effective competition in these products and services will be considered in later discussion of the needs and convenience of the community, particularly with reference to probable pro-competitive effects of the merger.

The approach adopted may not be orthodox in the light of previous bank merger decisions. But this is not the usual bank merger case which has come to the attention of the courts. Each of the defendant banks is a very small bank and the resultant bank will still be a small bank. Their competitors in *many* of the services and products offered are so numerous and effective in competition that the merger creating a larger but still small bank could not have any possible detrimental effect upon the present competition, much less the imminent potential ever increasing competition. Within the general line of commerce there are different clusters of products. Some encounter widespread competition from many sources. Others encounter substantial competition only from competing banks. So, while the term "commercial banking" may be used to designate the general line of commerce embracing all bank services, attention must be given in analysis of competition to different groupings within the line of commerce separating those products and services where absence of competition may be significant from those in which competition from many

sources is so wide-spread that no question of significant diminution of competition by the merger could be raised.

Accordingly, it seems that attention must be focused upon a small market both in terms of area and in products and services of the merged bank in which it could make its presence in the market felt. This is not intended to suggest that a stronger merged bank, in terms of assets, deposits and a substantial lending limit, could not, by exercise of its increased financial strength, operate with greater economic power than smaller banks and thereby capture the customers for products and services distinct from those above mentioned as constituting the competitive line of commerce in this case. For example, when a business man procures a loan from a local bank which another bank cannot offer, the likelihood is that he will open his checking account with the lending bank and no doubt avail himself of the other services offered. But this is a healthy kind of competition where the emphasis should rest upon service of the needs of the community rather than upon anticompetitive effect detrimental to a community. Of course, carried to the extreme, where, by exercise of its economic power in the market, the bank could dominate the customer by fulfilling certain needs of which others were not capable with substantial diminution of customer choice, there would be adverse anticompetitive effect. It is not conceivable, however, that the merged bank would have any such economic power or could achieve it in the foreseeable future. Indeed, there is a preponderance of evidence in the record here in support of the argument that increased capacity to serve a rapidly developing community with better bank credit is essential to continued growth and satisfaction of bank

service needs within the community rather than outside. This subject will be dealt with in greater detail in discussion of the credit needs of the community.

THE RELEVANT GEOGRAPHIC MARKET

A market consists of a group of sellers handling the same or comparable products and a group of buyers seeking those products. Purchaser convenience of access to the place of business of the seller is of paramount importance in fixing the geographic boundaries of the market. "In banking, as in most service industries, convenience of location is essential to effective competition. Individuals and corporations typically confer the bulk of their patronage on banks in their local community; they find it impractical to conduct their banking business at a distance." *Philadelphia*, supra, *Id.* at 358. It is difficult to draw precise boundaries. If the area is drawn too broadly, customers' convenience is not given due consideration and the expansive market unduly diminishes probable anticompetitive considerations. If geographic lines are drawn too narrowly, undue emphasis is placed upon probable anticompetitive effect. There must be "some fair intermediate delineation which avoids the indefensible extremes of drawing the market either so expansively as to make the effect of the merger upon competition seem insignificant, because only the very largest bank customers are taken into account in defining the market, or so narrowly as to place appellees in different markets, because only the smallest customers are considered." *Philadelphia,* supra, *Id.* at 361.

The government urges that the appropriate geographic market is the City of Phillipsburg and its environs consisting of the city and a few small munic-

ipalities adjacent to the boundaries of the city: Lopatcong Township, Pohatcong Township, Greenwich Township, Alpha Borough. This proposed market is very small. Alternately plaintiff suggests a larger area designated Phillipsburg-Easton and environs consisting of Phillipsburg and environs, the City of Easton, Forks Township, Williams Township, Palmer Township, Wilson Borough, West Easton Borough, Glendon Borough, Stockertown Borough, Tatamy Borough. The most distant point from the City of Phillipsburg in this geographic area is approximately six miles.

The areas beyond the cities of Phillipsburg and Easton are primarily rural with excellent highways for rapid and easy access to the well populated areas. This factor, associated with mobility of the population and economic integration of a much larger area, indicates that the market proposed by the government is too small.

The defendant banks suggest that the appropriate market would include the Allentown-Bethlehem-Easton standard metropolitan area, designated as a standard metropolitan statistical area (SMSA), plus northwestern Hunterdon County in New Jersey and all of Bucks County in Pennsylvania within 15 miles of Phillipsburg. This area would include all of Lehigh County and Northampton County in Pennsylvania, part of Bucks County, Pennsylvania, and Warren and part of Hunterdon Counties in New Jersey. The intervenor adopts the area proposed by the defendant banks but suggests that Lehigh County in Pennsylvania might be excluded except for the City of Allentown. The area suggested by defendant banks and the intervenor as the appropriate geographic market is too large, but, nevertheless, more realistic than the proposals of the government. There is considerable

evidence which tends to support the argument of defendant banks that the SMSA is an appropriate geographic market. There is easy access by excellent, non-congested highways from one point in the area to the other and there is a high degree of economic integration. A careful analysis, however, of population, interchange of business transactions and ease of access to banks, considered in conjunction with territorial overlapping of bank business leads this Court to conclude that the following municipalities in New Jersey and Pennsylvania located within relatively short distances (in point of time and travel) from Phillipsburg do comprise the appropriate geographic market:

New Jersey

Municipality	Distance in Mileage from Phillipsburg	Population*
Warren County:		
Phillipsburg		18,802
Lopatcong Township	Adjacent	2,703
Pohatcong Township	Adjacent	3,343
Greenwich Township	7	1,397
Alpha Borough	8	2,406
Harmony Township	8	2,039
Franklin Township	11	1,729
White Township	12	1,882
Belvidere	11.5	2,636
Oxford	14	1,657
Washington	12	5,723
Washington Township	13	3,055
Mansfield Township	15	2,130

*Population figures taken from 1960 census.

Municipality	Distance in Mileage from Phillipsburg	Population*
Hunterdon County:		
Holland Township	8.5	2,495
Bethlehem Township	11	1,090
Union Township	16	1,717
Alexandria Township	14	1,629
Milford	10.5	1,114
Hampton	13	1,135
Glen Gardner	14	787
High Bridge	17	2,148
Clinton	15.5	1,158
Bloomsbury	7	838

Pennsylvania

Municipality	Distance in Mileage from Phillipsburg		Population*
Northampton County:			
Easton	1		31,955
Palmer Township	5		8,823
Glendon Borough	3.5		886
Upper Nazareth	7		2,661
Bethlehem Township	9		6,439
Lower Saucon	11		5,536
Freemansburg	9		1,661
Forks Township	2		3,249
Wilson Borough	3		8,465
Stockerton Borough	6		777
Nazareth	6.5		6,209
Bethlehem	11		55,326
Williams Township	3		2,823
W. Easton Borough	1		1,229
Tatamy Borough	6		782
Lower Nazareth	6		1,729
Hellertown	11.5		6,716
Total			197,421

Municipality	Distance in Mileage from Phillipsburg		Population*
Bucks County:			
Riegelsville	7	(approx.)	953
Nockamixon	10	"	1,755
Springfield	10	"	3,085
Bridgeton	10	"	948
Durham	10	"	735

*Population figures taken from 1960 census.

The areas beyond the boundary lines of the cities of Phillipsburg, Easton and Bethlehem are sparsely populated but progressing rapidly in development from farm lands to home development and industrial and commercial enterprise. All significant development is taking place beyond the city limits of the well populated cities. For example, the population in Phillipsburg has remained more or less static for a long period of time. Industry and commercial enterprise has been moving out of the well populated areas of the city. The same is true in some degree with the city of Easton. Branch banks have been established be-

yond city limits to service the needs of a rural community that is growing rapidly in transition from an agricultural economy to commercial and industrial. Distances over good highways between the points above mentioned are short and commuting time by automobile ranges from seven to a maximum of twenty minutes. In fact, considering the ease of access from one point to another over uncongested highways, it would not be an exaggeration to state that it might take less travel time during business hours to journey by automobile from Bethlehem to Phillipsburg than it would to go from the outskirts of Philadelphia to the center of town.

Regular movement of population to and from places of business and employment and to stores for consumer goods throughout the entire area above mentioned has, among other things, led the Court to find that economic integration exists in the above described geographic market to such an extent that the lines should not be more narrowly drawn. There is not only little inducement to people residing beyond the city limits of the city of Phillipsburg and the city of Easton to make frequent use of the stores and commercial establishments in those cities, but cogent evidence that the trend is diminishing and even the residents of the cities are finding desirable employment and commercial facilities better suited to their needs in the rapidly developing suburban areas which are not afflicted with congestion in travel or parking of automobiles. Indeed, as to the city of Phillipsburg there has been no dispute that it has been rapidly deteriorating causing business enterprise to be established in the suburbs. The same is true in lesser degree in the city of Easton. Accordingly, to accept either of the government's proposed geographic markets—Phillipsburg and environs or Phillipsburg-Easton and

environs—would be to ignore the population, commercial and industrial drift into the suburban areas within a radius of approximately seven to fifteen miles of the cities of Phillipsburg and Easton. There is a preponderance of evidence that the growth of population and of the commercial and industrial enterprise outside city limits are continuing and will be intensified.

If, for instance, there is a prevalent pattern of employment within a described area with regular and constant movement of the population and routine shopping by the population from one point to another to satisfy consumer needs, there is evidence that the area within which the movement takes place is economically integrated as a market. The shopping habits of a buyer, whether in a bank or other market, have vital significance as a factor in the determination of a relevant market. Ease of access to the places of business patronized may be inferred from the buyer's prevalent use of such places of business. Places of employment is also a factor.

The government in its argument for a narrowly drawn banking market has emphasized percentages of banking business which PNB and SNB draw from the city of Phillipsburg and the populated areas immediately adjacent thereto. These percentages have significance only to the extent that they are considered in conjunction with concentration of population. For example, it would be expected that a higher percentage of deposits and loans would be derived from a heavily populated area of the market than from one that was sparsely populated. But that circumstance would not be a valid reason for moving the small town out of the relevant market. If the ratio of business on a per capita basis were the same or comparable, the small town belongs in the market. Any other ap-

proach would exclude most of the suburban areas. Moreover, even if little or no business is presently derived from a particular locality, if there is convenient ease of access to the market, the potential use as a satisfactory, convenient alternate choice should be considered.

ANTICOMPETITIVE EFFECT OF THE MERGER

A merger will be enjoined if its effect in the relevant market "may be" substantially to lessen competition. 15 U.S.C. 18. The Bank Merger Act of 1966 (12 U.S.C. 1828) did not change the traditional tests for measuring anticompetitive effect. ". . . . Only one conclusion can be drawn from the exhaustive legislative deliberations that preceded passage of the Act [Bank Merger Act 1966]: Congress intended bank mergers first to be subject to the usual antitrust analysis; if a merger failed that scrutiny, it was to be permissible only if the merging banks could establish that the merger's benefits to the community would outweigh its anticompetitive disadvantages. . . . *U.S.* v. *Third National Bank of Nashville,* 390 U.S. 171, 182 (1968). Percentage of market control and concentration in the industry have been recognized tests for evaluating the anticompetitive effect of a merger. *Philadelphia,* supra; *Brown Shoe Company* v. *U.S.,* 370 U.S. 294 (1962). The court in *Philadelphia,* supra, stated:

> Specifically, we think that a merger which produces a firm controlling an undue percentage share of the relevant market, and results in a significant increase in the concentration of firms in that market, is so inherently likely to lessen competition substantially that it must be enjoined in the absence of evidence clearly showing that the merger is not likely to have such anticompetitive effects. . . .

> Such a test lightens the burden of proving illegality *only with respect to mergers whose size makes them inherently suspect* in light of Congress' design in § 7 to prevent undue concentration. Furthermore, the test is fully consonant with economic theory. That "[c]ompetition is likely to be greatest when there are many sellers, none of which has any significant market share," is common ground among most economists, and was undoubtedly a premise of congressional reasoning about the antimerger statute. *Id.* at 363. (Emphasis supplied).

There is no precise percentage of market control or increase in concentration which can be used as a guide. The decision in each case must turn upon the particular facts in that case. For variations in percentages considered by the Supreme Court see *Philadelphia,* supra; *Brown Shoe Co.,* supra; *U.S.* v. *Continental Can Co.,* 378 U.S. 441, 461 (1964); *U.S.* v. *Von's Grocery Co.,* 384 U.S. 270 (1966). The percentage of market control and increase in concentration must be evaluated in the light of the structure of the entire market, including the existence of a history toward concentration. Where there is a prior history toward concentration, a relatively low percentage of market control or relatively small percentage of increase in concentration may be sufficient to invalidate a merger. Similarly, when the present level of concentration is great, a slight increase may justify disapproval of the merger. The court in *U.S.* v. *Provident National Bank,* 280 F. Supp. 1 (E.D.Pa. 1968) said:

> We do not find that this merger which would produce a bank controlling approximately 10% of the relevant market is presumptively anticompetitive. This percentage figure is not undue in relation to the composition of the market as a whole. The resultant bank certainly will not have market power which would en-

able it to persistently behave over substantial periods of time in a non-competitive fashion. . . . The converse is true. The defendant banks desire this market power so that they can behave competitively.

Yet, Congress and the Supreme Court, in carrying out the mandate of Section 7, have stated that one purpose of Section 7 is to arrest a trend toward concentration or a tendency toward monopoly, before the consumer's alternatives disappeared through mergers. . . . This Court accepts the fact that both Provident and Central-Penn would become a better and more competitive bank after the merger, but this fact does not offset the loss of Central-Penn which is a growing and healthy bank in an oligopolistic market.

The case which we feel controls the merger before us is U.S. v. Von's Grocery . . . [There] the resultant company would control only 7.5% of the total value of retail groceries sold in the . . . market each year. The . . . market was characterized as one where there was a long and continuous trend toward fewer owner-competitors. . . . On these facts alone, the merger was condemned without a functional inquiry into the nature and quality of the competition. The basic purpose of the Sherman and Clayton Acts . . . was to prevent economic concentration in the American economy by keeping a large number of small competitors in business. . . . This view . . . shifts the emphasis of Section 7 from protecting competition to protecting competitors. . . . The Philadelphia banking market unqualifiedly can be characterized as one where there has been a long and continuous trend toward concentration.

Therefore, even if we did find that competition would be improved by this merger: "[it] falls within this trend toward merger and toward more concentration, . . . [and] must be

ruled anticompetitive under existing antitrust laws. *Id.* at 19–20.

"[W]hile providing no definite quantitative or qualitative tests by which enforcement agencies could gauge the effects of a given merger to determine whether it may 'substantially' lessen competition or tend toward monopoly, Congress indicated plainly that a merger had to be functionally viewed, in the context of its particular industry. That is, whether the consolidation was to take place in an industry that was fragmented rather than concentrated, that had seen a recent trend toward domination by a few leaders or had remained fairly consistent in its distribution of market shares among the participating companies, . . ." *Brown Shoe Co.,* supra, at 321—322.

Competing banks percentage of total assets in the market, deposits and percentage of total market deposits are listed as follows:

Bank	Assets	Percentage of total
1. First National Bank & Trust Co. (Bethlehem, Pa.)	$115,327,000	18.96
2. Union Bank and Trust Co. of Eastern Pa. (Bethlehem)	93,747,000	15.41
3. Easton National Bank & Trust Co. (Easton, Pa.)	75,591,000	12.43
4. Hunterdon County National Bank (Milford, Holland Twp., High Bridge and Clinton Branches)	57,716,000	9.49
5. Nazareth National Bank & Trust Co. (Nazareth, Pa.)	32,014,000	5.26
6. Lafayette Trust Bank (Easton, Pa.)	27,705,000	4.56
7. Phillipsburg National Bank (PNB) (Phillipsburg)	23,861,000	3.92
8. Northampton National Bank (Easton, Pa.)	23,225,000	3.82
9. First Clinton National Bank (Clinton)	21,199,000	3.49
10. First National Bank of Washington (Washington)	20,494,000	3.37
11. First National Bank of Milford (Milford)	20,443,000	3.36
12. First National Bank, Belvidere (Belvidere)	17,302,000	2.85
13. Second National Bank of Phillipsburg (SNB) (Phillipsburg)	17,255,000	2.84
14. Washington Trust Company (Washington)	15,857,000	2.61
15. Second National Bank of Nazareth (Nazareth, Pa.)	15,187,000	2.50
16. Phillipsburg Trust Co. (Phillipsburg)	13,161,000	2.16
17. Saucon Valley Trust Co. (Hellertown, Pa.)	12,947,000	2.13
18. Citizens National Bank of Bloomsbury (Bloomsbury)	5,225,000	.86
Total	608,177,000	1 100.02

See footnote at end of table

Bank	Deposits	Percentage of total
1. First National Bank & Trust Co. (Bethlehem, Pa.)	$102,898,000	18.98
2. Union Bank and Trust Co. of Eastern Pa. (Bethlehem)	79,072,000	14.58
3. Easton National Bank & Trust Co. (Easton, Pa.)	67,722,000	12.49
4. Hunterdon County National Bank (Milford, Holland Twp., High Bridge and Clinton Branches)	53,458,000	9.86
5. Nazareth National Bank and Trust Co. (Nazareth, Pa.)	28,706,000	5.29
6. Lafayette Trust Bank (Easton, Pa.)	24,309,000	4.48
7. Phillipsburg National Bank (PNB) (Phillipsburg)	22,358,000	4.12
8. First Clinton National Bank (Clinton)	19,396,000	3.58
9. Northampton National Bank (Easton, Pa.)	18,961,000	3.50
10. First National Bank of Milford (Milford)	18,785,000	3.46
11. First National Bank of Washington (Washington)	18,236,000	3.36
12. First National Bank, Belvidere (Belvidere)	16,029,000	2.96
13. Second National Bank of Phillipsburg (SNB) (Phillipsburg)	16,005,000	2.95
14. Washington Trust Company (Washington)	14,506,000	2.68
15. Second National Bank of Nazareth (Nazareth, Pa.)	13,314,000	2.46
16. Phillipsburg Trust Company (Phillipsburg)	12,078,000	2.23
17. Saucon Valley Trust Co. (Hellertown, Pa.)	11,560,000	2.13
18. Citizens National Bank of Bloomsbury (Bloomsbury)	4,788,000	.88
Total	542,181,000	[1] 99.99

[1] Due to rounding.

It would have been appropriate to include the branch bank of the Girard Trust Company which is located in Riegelsville, Pennsylvania. It was omitted in computation of total assets and deposits of the banks in the area because a breakdown of the banking business of the branch was not available. The parent bank, Girard Trust Company of Philadelphia, has total assets of $1,457,713,000 and total deposits of $1,289,941,000.[2] Obviously these figures could not be used for any meaningful analysis of the structure of the banking market involved here. Such evidence as there is, however, indicates that if the branch bank's assets and deposits were available and included, it would not cause a very substantial comparative change in the above cited percentages either in terms of concentration or deposits. It might also be mentioned at this point in dealing with the subject of

[2] Figures shown on Exhibit D-20 as corrected from Exhibit D-17.

satisfactory alternate consumer banking choices that other large banks at the fringe of the market, are easily accessible and constitute effective potential competition.

There is no historical trend toward concentration in the banking industry in this market and there is no present concentration. The market is fragmented. The bank patron has many convenient choices. Including the branch bank of Girard Trust Company, there are nineteen banks in the market together with a number of branches to offer convenient services to bank customers. The total population by the 1960 census is 197,421. Percentage control of the market, as indicated by deposits, is well distributed among the existing banks. Considered in terms of percentage increase of assets in the market and increase in percentage of total deposits, the merger will have no substantial effect.

In terms of assets PNB is the seventh largest bank and SNB is the thirteenth. After the merger, the new bank PNB–SNB will be the fifth largest bank with 6.76% of total assets in the market. The two largest banks, First National Bank and Trust Company, Bethlehem, and Union Bank and Trust of Eastern Pennsylvania, Bethlehem, hold 34.37% of all of the assets in the market. The four largest banks, First National Bank and Trust Company, Bethlehem; Union Bank and Trust of Eastern Pennsylvania, Bethlehem; Easton National Bank & Trust Company and Hunterdon County National Bank hold 56.29% of the total assets. The five largest, including the four just mentioned plus Nazareth National Bank and Trust Company, hold 61.55%. After the merger, the concentration of the four largest banks will remain unchanged. It is only when the five largest banks are considered that there is a change in concentration.

This change is from the pre-merger five largest banks concentration of 61.55% to a post-merger five largest banks concentration of 63.05%. The percentage of increase in concentration is 2.4%. The percentage of total assets of the merged bank in the market will be 6.76%.

PNB ranks seventh in percentage of deposits and SNB ranks thirteenth. After the merger the new bank PNB–SNB will rank fifth with 7.07% of total deposits in the market. The two largest banks have 33.56% of the deposits; the four largest have 55.91%; the five largest have 61.20%. After the merger, the five largest banks concentration will be 62.98%. The percentage of increase in concentration after the merger is 2.9%. The percentage of total deposits of the merged bank in the market will be 7.07%.

The percentage figures cited above indicate clearly that the merger will not cause any substantial increase in concentration of economic power or substantial percentage increase of the share of the merged bank in total deposits in the market.

Ease of access to the market is also a factor that deserves consideration in evaluating the anticompetitive effects of a merger. It is not difficult for a small group of business men to raise sufficient capital to establish a new small bank when the banking needs of the community are sufficient to warrant approval of the charter. N.J.S.A. 17:9A–4,5.[3] Warren County,

[3] N.J.S.A. 17:9A–4 Capital stock and surplus:

A. The capital stock of every bank hereafter organized shall amount to not less than:

(1) $100,000.00, if the population of the municipality wherein the principal office of the bank is to be located does not exceed 10,000;

(2) $150,000.00, if the population of such municipality exceeds 10,000, but does not exceed 50,000;

New Jersey, is now included by statute in a banking district consisting of the counties of Bergen, Essex, Hudson, Morris, Passaic, Sussex and Warren. Large city banks in Newark and in other well populated cities in the counties mentioned can now establish branch banks in Warren County in any municipality

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(3) $200,000.00, if the population of such municipality exceeds 50,000, but does not exceed 100,000;

(4) $300,000.00, if the population of such municipality exceeds 100,000, but does not exceed 200,000;

(5) $500,000.00, if the population of such municipality exceeds 200,000; provided that, if the certificate of incorporation states that the bank shall be authorized to exercise all or any of the powers specified in section 28, its capital stock shall be not less than $500,000.00.

B. If the commissioner shall find that the principal office of a bank will be located in a municipality which serves as a business or as a banking center for outlying districts not otherwise adequately provided with banking facilities, so that such bank will transact business with a substantial number of persons who do not reside in the said municipality; or if the commissioner shall find that, because of its location, a bank will transact a substantial part of its business with persons from a neighboring municipality or municipalities, the commissioner may, in his discretion, require that the capital stock with which such bank shall commence business, shall equal the minimum capital stock which would be required of the bank if its principal office were to be located in a municipality having a population equal to that of the combined populations of the municipality in which it is to be located and of the area, outside such municipality, which it will serve.

C. Every bank hereafter organized shall commence business with a surplus at least equal to 20% of its capital stock.

N.J.S.A. 17:9A-5 Reserve or organization expense:

Every bank shall, on its organization, establish a fund at least equal to 5% of its capital stock as a reserve fund for organization expense. Organization expense shall mean all lawful expense incurred preliminary to commencement of business. Any unexpended balance in the fund shall be credited to undivided profits.

in which no banking institution has its principal office or a branch office and in any municipality which has a population of 7,500 or more where no banking institution has its principal office despite the fact that there are one or more branch offices of other banking institutions in that municipality. Pamphlet Laws 1968, Chapter 415, N.J.S.A. 17:9A–19, approved January 17, 1969 and effective July 17, 1969.[4]

Pursuant to these statutory provisions there are many locations in Warren and Hunterdon Counties where either a new bank or a branch bank could be established.

In the light of the absence of any historical trend toward concentration or the existence of any present undue concentration, there can be no *presumptive* inference of anticompetitive effect. Such effect in this case must be established by a preponderance of the evidence. Evidence from which anticompetitive effect could be inferred is meager and not persuasive. It was suggested that mergers tend to cause an increase in interest charged on loans and a decrease in interest paid on deposits. The evidence does not support this

[4] No bank or savings bank shall establish or maintain a branch office which is located outside the municipality in which it maintains its principal office; except that a bank or savings bank may establish and maintain a branch office or offices anywhere in the same banking district as that in which it maintains its principal office:

* * * * *

(3) when each proposed branch will be established in a municipality in which no banking institution has its principal office or a branch office; except that, when a municipality has a population of 7,500 or more, and no banking institution has its principal office therein, a bank or savings bank may establish and maintain a branch office or offices in such municipality notwithstanding the presence therein of one or more branch offices of one or more banking institutions.

theory. Nor did the government point with evidence to any other particular banking service which might be adversely affected by the merger. Indeed, there is a preponderance of evidence to support a conclusion that the merger would have procompetitive effect *if* the merged bank, employing its increased resources, adopted aggressive policies which would have a tendency to stimulate other small banks to become more aggressive in serving the needs of the community. Robert Leupo, Executive Vice President of Phillipsburg Trust Company, described PNB and SNB as banks in direct competition with his bank describing it as healthy competition beneficial to his bank. He stated:

> I would say it was healthy competition, healthy competition to the extent that we have grown, that we have been recognized and we have progressed. I would say it was healthy competition.

It seems from the evidence that most of the small banks in the area have not been interested in building up banking services except to the extent that aggressive competitors led the way. An ultraconservative policy of banking seems to have been prevailing with reluctant change occurring only when profits and future growth were threatened by virulent competitors. There is an attitude of complacency on the part of many banks. They are content to continue outmoded banking practice and reluctant to risk changes which would improve service and extend services over a greater area to a larger segment of the population.

This Court finds that plaintiff has failed to sustain its burden of proof to establish by a preponderance of the evidence that the merger would have any measurable anticompetitive effect. The Court finds, however, that since the subject of serving the convenience

and needs of the community has been well developed by the evidence, that it is appropriate to discuss this defense.

CONVENIENCE AND NEEDS OF THE COMMUNITY TO BE SERVED

There are two banking services which must be improved in the area to satisfy present and rapidly increasing need. Lending limits of the small banks are not sufficient to satisfy loan requirements for substantial industrial and commercial enterprise. There are only a few of the larger banks in the area that can handle single loans of $75,000 and upward. As a result, a substantial volume of credit sought by industrial and commercial enterprise must be arranged either directly with the large city banks outside the area or by way of a participating loan through a local bank. There is a definite lack of competent trust service and here again servicing of substantial trust accounts must be obtained outside the community with the larger banks that maintain trust departments with expertise in the field of investments. Very small banks like PNB and SNB do not have the financial capacity to maintain separate commercial and industrial lending departments and trust departments headed by a full-time officer with specialized expertise. If the merger is approved, the merged bank can establish these departments and staff them with personnel capable of the kind of loan and trust service that patrons must, in large part, now seek outside the community.

There is no doubt that a well trained, full-time specialist in a loan department could serve a rapidly increasing need of commercial and industrial enterprise in the community by readily available expert

and diversified credit planning and counsel. The same is true with respect to a trust department.

A larger bank than either PNB or SNB is necessary to furnish better loan and trust service to the community. There are very few banks in the area that are even partially equipped to furnish large commercial and industrial enterprise with the kind of trust and loan banking service that is needed. Another larger bank offering these services would diminish the existing inadequacy.

The salaries which a full-time specialist in a loan department and a trust department could command are beyond the financial reach of either PNB or SNB. In fact, it seems that highly specialized experts in loan planning service and trust service to bank patrons are constantly sought by banks and difficult to obtain. The expense of highly specialized service in lending money and servicing trust funds can be incurred only by banks larger than either PNB or SNB. The initial salaries of the necessary specialists is not the only consideration. The substantial salaries which either bank would have to pay would cause an upgrading of all salaries from the president down as a matter of morale. In addition, there would be the matter of fringe benefits. Small banks do not pay high salaries and fringe benefits are limited.

The government stresses the argument that neither PNB nor SNB have made any genuine effort to recruit specialists to head a commercial and industrial loan department or a trust department, but the evidence does establish that such specialists are not easy to find and not likely to be induced to accept employment for a small salary or with a very small bank. It is, however, clear from the evidence that neither bank can afford the expense of employing well trained specialists to head a loan and trust department. There

was tentative exploration of the possibility of obtaining qualified bank officers which ceased when it became clear that the expense was out of reach.

The forecast is that if the merger is approved, the merged bank will set up a commercial and industrial loan department headed by a bank officer who is a specialist in the field and would do the same as to a trust department. The merged bank would have capacity to do so and there is no reason to believe that it would not do so as a matter of self-interest in future growth and better service to the community.

Illustration by excerpts from testimony of some of the witnesses [5] clearly establishes the fact that a larger bank could improve the present inadequate bank lending and trust service. It should be emphasized that present need will become more critical with future growth of the community. A business man who operates a television sales and service business in Phillipsburg with total assets of approximately $200,000, stated:

> Q. Have you had to borrow money from the Phillipsburg National?
>
> A. Yes. Originally when I purchased the store, this business on Memorial Parkway, four years ago this November, I approached them and they extended to me a line of credit of $50,000 for floor planning. Within I would say approximately two years ago I bought this business and building on a sales purchase agreement, and I wanted to pay the party off whom I purchased it from, and I approached the bank for a mortgage, which was approved, but at this time I had to take a cut in my floor planning account of $25,000 to allow for the mortgage I was seeking.

[5] Names of witnesses are omitted because of request that financial problems of a confidential nature not be made public.

Q. That is with the mortgage and your borrowing you would have exceeded the limits?

A. Yes, sir.

Q. Where did you turn in order to get credit?

A. Well, I had to increase my line of credit with First Pennsylvania Bank in Philadelphia and also with General Electric Credit Corporation.

Q. Would you prefer doing business with the Phillipsburg National?

A. Yes I would, primarily because I am well known at the bank, and as far as the business aspects, the rate of interest was less, and now in comparison to General Electric Credit Corporation their rates are 1.4 per cent per month on unpaid balances, whereas until the last increase to 7 per cent per year it was a half per cent per month at the local bank.

Q. So you are really paying 15 per cent?

A. That is right, on a yearly basis. At the First Pennsylvania Bank the rate is approximately 9 per cent per year at this time.

Q. And what are your credit needs at this moment?

A. Well, that fluctuates. While going into the greatest part of our business—in other words, the last quarter of the year is usually the bulk of our business, and at this time of the year we do need more moneys to display more merchandise and too, the biggest part of our business is done through this period of time.

Q. Well what limit would you desire or what uppermost limits?

A. Well, in other words, with mortgages and other moneys that I would need as far as floor planning—in other words, a gross amount of approximately $200,000.

Q. Are there any other disadvantages of doing business with the General Electric Credit outfit?

A. Well, with any distributor it is much easier if you have moneys available when you

go to purchase a product, say during their—during the year most of these companies have at least four shows, and at this time if the money is available to me—in other words, if I would go and be able to buy more or less on a cash basis I can buy the merchandise that I want, whereas what they do to entice a person into buying their packages, they do mix products in there which are slow movers, and in order to buy what we want we must take these other items also.

Q. If you have the money from the bank and went in there—

A. You can purchase just what you want.

Q. Then you wouldn't have the slow items.

A. This is right, sir.

A manufacturer in Greenwich Township stated:

Q. What do you contemplate your borrowing needs will be in the next few years?

A. We are getting into more sophisticated types of machines, which are high priced; our latest acquisition, a year and a half ago, was a $65,000 installation. The next ones, in all probability, will be in the range of $100.00 per machine.

Q. What do you contemplate your credit needs then to be?

A. The situation obviously has to be determined when it arises, but I would say that our needs will be between $100,000 and $200,000.

Q. Where are you banking presently?

A. At the Second National Bank in Phillipsburg.

Q. Would a merger of these two banks be of assistance to you?

A. I believe a larger bank in Phillipsburg will be a definite asset to me.

Q. For how long a period do you usually want to borrow money?

A. Our history has been on machinery purchases we have borrowed on the basis of three to five years.

Q. Isn't it possible to get this through the company that sells you the product?

A. Yes.

Q. Why do you prefer the bank?

A. It is much more convenient to do business locally and it is cheaper.

Joseph G. Varga, Vice President of Phillipsburg National Bank, describing the credit situation at the bank, stated:

A. We have requests for commercial and industrial loans for people that are starting into business. They would run in the neighborhood of 25,000, 75,000 and upwards. Our biggest concern at this time is the fact that some of our customers who have gone into business loans with us are continually growing. They are asking us for larger lines of credit. They also ask us for commercial mortgages, and at the lending limit that we are now these corporations and business houses are outgrowing our bank.

Q. It is not always a loan, is it, that they want as much as a line of credit.

* * * * *

A. The lines of credit are established for various business houses and in order for them to get better trade credit corporations or people that are doing trading in our area will call the bank and ask what kind of demand deposit balance the corporation has, and then they would ask what kind of line of credit, "Are you giving them a line of credit?" Is their credibility worth so much, and we would say, "Well, we are lending them a certain figure on an open line."

Q. How about the practice with respect to contractors bidding on jobs?

A. One of the requirements of a contractor bidding on a school program or something like that is to have an established line of credit at a bank, and this enables him to submit his bid.

A Ford dealer stated:

Q. And when you first came to Phillipsburg did you endeavor to do business with a bank there?

A. Yes, the Phillipsburg National Bank & Trust Company.

Q. Will you describe your problem?

A. Well, the bank was recommended to me and I opened a business account there, and they had an automobile department at that time, and I tried to get a line of credit for my floor plan. At that time it was about $150,000, and they couldn't handle it. Their loan limit there wouldn't permit this, and I subsequently had to go to Ford Motor Credit Company, which was at that time in Newark.

Q. Are you doing business with them?

A. With Ford Motor Credit Company.

Q. What would your preference have been?

A. At that time I wanted to go to a local bank due to the nature of our business.

A business man in Phillipsburg, speaking of the need for a loan officer and a trust department stated:

Q. What would you say about a merger of these two banks so far as your doing business with them is concerned?

A. I would welcome it because of the loan limits. For example, at the first of the year when I was more heavily committed in the market than I am now, I owed about five hundred-odd thousand dollars to the various banks, and I hit a loan limit at that time of about $100,000. I don't know if it was just around that time, but I know at one time Mr. Murray told me they wouldn't go over a hundred thousand. I hit that

limit. I hit an $88,000 loan limit at the Second National and a hundred thousand loan limit at the Phillipsburg Trust, so I had to go into Easton. Actually I think it would be much more convenient. For one thing, I think that a larger bank could afford to have somebody in their loan department that would do that only, that would be more familiar with securities. This is not derogatory to any bank.

Q. Especially since you are a borrower.

A. Yes. Sometimes I have to explain to them what may or may not be done, you know, and someone who is more familiar with it—I also feel that if they could afford to hire or be large enough to have someone with some knowledge of this, I think they would do a lot better in their business. There are a lot of collateral loans that are going begging.

Q. Where do they get it?

A. Sometimes they don't even know they can get it. Well, usually they go elsewhere. I imagine that the banks in Allentown do a lot of that. They are much larger.

Q. Is there a need in the area you have described for trust services?

A. Oh yes. I think this is a very big thing. I know this has happened to me, so I'm sure it has happened to the rest of the community. The country has become more affluent and the average workman today is coming into my place and spending—the average workman today is much more affluent. I am doing a security business today with people that never dreamed of owning a share of stock, and one fellow asked me to set up a sort of estate based on mutual funds, and he was talking about five or six thousand dollars. This is about three or four weeks ago, and I told him if anything happened it would be worth a lot more money. Most people don't realize they have an estate. There is insurance and if the house is sold this is a lump sum and there are many other things

that are worth money that don't show up until there is an estate, and frankly a lot of women—we live in an area where there [are] a lot of foreign-born people, and some of them are not terribly educated, and a lot of these people should have some sort of reliable trust setup so the estate wouldn't be dissipated or improperly handled.

Q. How about pension funds?

A. Oh, well every union is looking for a pension fund, and the way some of them are being handled I think it would be a lot better if a trust officer looked after them.

A department store owner stated:

Q. Do you have any business which could be classified as trust business?

A. We have set up a long time ago profit-sharing trusts in our Easton store which was followed by profit-sharing trusts in the Bethlehem store. Our realty corporation over there and in the new Phillipsburg store—is that what you refer to?

Q. Yes. If the Phillipsburg bank had a full time trust officer would there be a possibility that you would turn some business in that direction?

A. We would very much like to, and as a matter of fact part of this hinges in our feeling the competitive odds against a small independent retailer. He has to exercise every bit of ingenuity he has to overcome the competitive effect of nationally known outlets and big advertising campaigns, and we do everything we can to have the public in the area aware that we are part of the community. One of them is to bank there, to borrow there, to have the bank use every service, give us every service they can, and the minute the Phillipsburg National has a trust department the trust account for the Phillipsburg store will be moved over there. We have that in our trust indenture. It can be changed.

Q. You know they have a trust department there now?

A. Well, we would like to have a complete service.

Q. How about borrowing? I would assume being in the merchandising business that you borrow over the years?

A. When we opened the Phillipsburg store, prior to opening the Phillipsburg store our first move was to check with the Phillipsburg National, because we felt an examination of the statements indicated that they were the one, the only one that could come anywhere near giving us what we needed, and at that time I believe their top line capacity was about $90,000. We took it all. We reduced that. I believe we still have some, but our present expansion is going to require our reentering into the matter of borrowing from some source, and we prefer it to be a local bank. This is very shortly, within the next month or two.

Q. What do you think the extent of that borrowing will be?

A. It wouldn't be less than a couple of hundred thousand dollars, and it might go considerably higher.

Q. Where would you take that?

A. Where would we borrow it?

Q. Yes.

A. Well, we would borrow every nickel we could from the Phillipsburg bank, and after that it would be a matter of finding out how much we needed and shopping around.

The foregoing are only a few excerpts from a volume of evidence which clearly establishes the inadequacy of loan service and trust service available in the community and the need for improvement in that aspect of local banking. As commercial and industrial enterprise continue to grow and increase numerically in the area, a substantial part of banking

business will have to be done outside the community. This is not only inconvenient, but economically unhealthy for future development. One who procures a loan from a bank is likely to do his other business with that bank, including the checking account. The demand deposit generates capacity for increased expansion of credit that may be applied to stimulate industrial and commercial growth with all of its attendant benefits, including greater opportunities for employment.

In the trust field it is desirable that pension funds of unions and large industries and profit sharing plans as well as trust funds from other sources be administered locally.

It was emphasized by the government that local loan needs could be satisfied by participating loans. William F. Greenley, Jr., Senior Vice President of Fidelity Union Trust Company, a corresponding bank, commenting upon the disadvantages of such loans, stated:

> Q. Is there any disadvantage in participations?
>
> A. Yes. I think there is. There is a disadvantage to this extent, first of all there is a general money market. When funds were tight, such as they were part of this summer and certainly a year before this, I think most banks or any smaller bank had a real problem getting a participation. Now, not only is it the general market money that decides this, but it can be the special pattern of loans and deposits that the correspondent bank or banks may have. At certain times of the year certainly you can get—other things being equal—you can get a participation from us. At other times we would not care to participate because we have our funds either fully tied up or perhaps more gainfully employed.

> There is the other portion to it, too, that many times where a participation is sought it is the type of business that you want to be right on hand watching. I am thinking now of say a restaurant or an unseasoned business where you just feel you want to be in there all the time. There is also the thing, too, with a participation loan, that generally the bank giving the overage requires to be paid out first, so that if things go fine this is fine, but also if it is a wavery situation the local bank is pretty well stuck in there.

Another source of borrowed money is the finance company to which business men must resort when lending limits of the local banks are inadequate. It has been said that finance companies cannot compete with banks because they are not primarily accumulators of money and must borrow for their needs from banks and, as a consequence, must demand a higher rate of interest from borrowers. This picture seems to be changing. Professor Homer Kripke with extensive experience in the development of finance company business traced the history with analysis of present operations. According to his testimony, with which the Court was impressed, finance companies presently borrow very little money from banks and today they can outbid the banks for loans. They can and do obtain million dollar loans from all large industrial corporations in the United States such as the oil companies, tobacco companies and the large chemical companies. The evidence indicates that finance companies occupy an advantageous position in the lending market where there is borrower necessity to use their lending capacity. This seems to be particularly true in the matter of floor planning and other large inventory financing. The impact here is not only upon the business dealer, but also upon the

individual consumer whose paper goes back from the dealer to the finance company at a higher rate of interest than would be the case if it came into the hands of a bank through dealer financing by a bank. Larger bank lending limits will meet an urgent need of business men and be ultimately beneficial to the individual consumer in financing purchase of goods.

There was much discussion about the effect of the Bank Merger Act of 1966 upon application of Section 7 of the Clayton Act to mergers. The traditional test for determining anticompetitive effect was not changed. *Third National Bank of Nashville,* supra. But while fragmentation of the market as opposed to concentration is still favored, it is clear that Congress did not intend to emphasize fragmentation to that point *in the banking industry* where there would be substantial detriment to the consumer. For historical comparative background see *Brown Shoe Co.,* supra, 294, 344.[6] Strong banks capable of stimulating industrial and commercial growth and serving individual needs economically are vital to a prosperous economy and a higher standard of living. The Court finds that there is a preponderance of evidence showing that any conceivable anticompetitive effect of the merger is clearly outweighed by the effects of the transaction in meeting the needs and convenience of the community to be served.

---

[6] "Of course, some of the results of large integrated or chain operations are beneficial to consumers. Their expansion is not rendered unlawful by the mere fact that small independent stores may be adversely affected. It is competition, not competitors, which the Act protects. But we cannot fail to recognize Congress' desire to promote competition through the protection of viable, small, locally owned businesses. Congress appreciated that occasional higher costs and prices might result from the maintenance of fragmented industries and markets. It resolved these competing considerations in favor of decentralization. We must give effect to that decision." *Id.* at 344.

CONCLUSION

For the reasons stated the Court finds that plaintiff has failed to establish by a preponderance of the evidence that the proposed merger would have any anticompetitive effect and, further, that even if there were *de minimis* anticompetitive effect in the narrowly drawn market proposed by the government, such effect is clearly outweighed by the convenience and needs of the community to be served by the merged bank.

An appropriate order may be submitted for entry of judgment in favor of defendants and the intervenor and against plaintiff without costs.

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil No. 56–68

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY AND THE SECOND NATIONAL BANK OF PHILLIPSBURG, DEFENDANTS

and

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR

Judgment

This action having come on for trial before the Court, Honorable Robert Shaw, District Judge, presiding, and the Court having considered the testimony and evidence presented and the arguments of counsel, and the Court having rendered and filed an Opinion herein dated October 14, 1969, and in accordance with the Opinion,

IT IS, on this 20th day of October, 1969,

ORDERED AND ADJUDGED that judgment be entered in favor of the defendants and the intervenor

and against the plaintiff, plaintiff's prayer for relief is denied, and the action be and it is hereby dismissed with prejudice and without costs.

ROBERT SHAW
U.S.D.J.

U.S. GOVERNMENT PRINTING OFFICE: 1970

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1093

UNITED STATES OF AMERICA, *Appellant*

v.

PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY, SECOND NATIONAL BANK OF PHILLIPSBURG, AND WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY

On Appeal From the United States District Court for the District of New Jersey

JOINT MOTIONS TO STRIKE, AFFIRM AND ADVANCE

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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APPENDICES

Appendix A—Map of New Jersey outlining the First, Second and Third Banking Districts, under the new New Jersey banking statute.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. ———

UNITED STATES OF AMERICA, *Appellant*

v.

PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY, SECOND NATIONAL BANK OF PHILLIPSBURG, AND WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY

On Appeal From the United States District Court for the District of New Jersey

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JOINT MOTIONS TO STRIKE, AFFIRM AND ADVANCE

STATEMENT

Procedural Background

Appellees the Comptroller of the Currency, the Phillipsburg National Bank and Trust Company (PNB) and the Second National Bank (SNB) by this joint brief move before the Court for (1) an Order directing that certain matters referred to in the Jurisdictional Statement submitted by the Justice Department be stricken and that certain non-evidentiary ma-

terials lodged with the Clerk of the Court be redelivered; (2) that this Court affirm the decision of Judge Shaw in the Court below and (3) that the Court Order that the matter be advanced on the calendar for early argument. The Court need not consider this final motion should it decide to affirm the Court below.

The merger agreement between the two defendant banks was entered into in April 1967, almost three years ago. Application to approve the merger pursuant to 12 U.S.C. 1828(c), the Bank Merger Act of 1966 (hereinafter B.M.A. '66) was made to the Comptroller on May 1, 1967. A hearing on the matter was had before the Comptroller on August 14, 1967. Approval followed in November 1967. On January 16, 1968 the United States filed suit in the District Court challenging the merger as contrary to Section 7 of the Clayton Act. (15 U.S.C. 18) An eleven day trial was had before the United States District Court for New Jersey, Judge Shaw sitting. On October 20, 1969 the decision of the District Court approving the merger was entered on the docket. Notice of Appeal was timely filed and the Justice Department has now filed its Jurisdictional Statement with the Court.

The District Court Opinion

In evaluating the competitive effect of the merger the District Court used a geographical market including portions of Warren and Hunterdon Counties in New Jersey and Northampton and Bucks County in Pennsylvania. (Jurisdictional Statement, App. A, 15a-16a)[1] Within this market PNB would be the seventh largest bank and SNB, the thirteenth. (24a) The resulting bank would have 6.76% of the total assets

[1] Hereinafter similar references are made solely to the "a" page.

of commercial banks in this market area and 7.07% of total deposits. (24a-25a) Evaluating the merger in terms of the usual antitrust analysis (ease of access, trend toward concentration, prior merger history) the court found "no presumptive inference of anticompetitive effect". (27a) It then characterized the "evidence from which anticompetitive effect could be inferred [as] meager and not persuasive". (27a) Concluding its analysis in this phase of the case the Court found "that plaintiff has failed to sustain its burden of proof to establish by a preponderance of the evidence that the merger would have any measurable anticompetitive effect". (28a)

Plaintiff as to this initial phase of the case now seeks to raise the question of whether general social and economic factors can be used to define a market. (Jurisdictional Statement, 3) This is the first question presented. As to this phase of the case, the Justice Department has not raised any other question. It has reserved only by footnote appended to its first question the right, if probable jurisdiction is noted, to question the court's determination of the relevant line of commerce.

While the Court did not have to consider the convenience and needs test, no anticompetitive effect having been found, it nevertheless proceeded to consider this issue. After a thorough examination of the advantages accruing to the community from the merger the Court concluded:

> ". . . there is a preponderance of evidence showing that any conceivable anticompetitive effect of the merger is clearly outweighed by the effect of the transaction in meeting the needs and convenience of the community to be served. (41a)

In its final Conclusion the Court went further and again performed the balancing test required under B.M.A. '66 this time assuming that Phillipsburg-Easton and environs, the area proposed by the Justice Department, was the relevant market:

> "... even if there were *de minimis* anticompetitive effect in the narrowly drawn market proposed by the government, such effect is clearly outweighed by the convenience and needs of the community to be served by the merged bank." (42a)

Thus, the balancing test was performed in the narrow market proposed by Justice.

Justice seeks to raise two questions directed to this second phase of the case, whether the court looked to the proper "community" area in evaluating convenience and needs and whether the court adequately considered means alternative to merger. (Jurisdictional Statement 3, 4) These two questions, like the first, will be shown to be insubstantial and not to merit review by this Court. Unlike the first question, however, these last two directed to convenience and needs are pendent and depend fully on this Court's finding that the first question is substantial and merits review. Questions of convenience and needs cannot be reached unless anti-competitive effect is first established.

Other relevant facts to the extent necessary are considered under the related argument headings.

I

MOTION TO STRIKE REFERENCES TO AGENCY REPORTS AND TO ORDER CLERK TO REDELIVER MATERIAL NOT IN EVIDENCE WHICH HAS BEEN LODGED WITH THE COURT

Defendant-Respondents the Phillipsburg National Bank (hereinafter PNB), Second National Bank (hereinafter SNB) and William B. Camp, Comptroller of the Currency move before the Court for an order striking from the Jurisdictional Statement and from all briefs filed all references to various reports made by the banking agencies with regard to the proposed merger[2] and directing the Clerk of the Court to redeliver all such materials previously lodged with the Court which have not been placed in evidence. (See Jurisdictional Statement, 5 n. 4) In Jurisdictional Statement filed with the Court, the Justice Department has relied heavily on quotations from the Application to Merge (Jurisdictional Statement, 5) and the reports of the Federal Reserve Board and Federal Deposit Insurance Corporation (*Id.*, 6). These have been used to support its position that the case presents substantial questions meriting review. These reports were submitted to the Comptroller pursuant to 12 U.S.C. §1828(c) 4 which provides:

> "In the interests of uniform standards, before acting on any application for approval of a merger transaction, the responsible agency, unless it finds

---

[2] More specifically defendants move that the following be stricken:

(a) The complete statement of "The Proceedings" on pages 5, 6 and 7 with the exception of the concluding paragraph.

(b) The reference on page 10 to the Application.

(c) All of footnote 12 on page 11, together with the sentence in main text relating to testimony at Comptroller's hearing.

(d) All reference to the action of the advisory banking agencies in footnote 13 on page 13.

> that it must act immediately in order to prevent the probable failure of one of the banks involved, shall request reports on the competitive factors involved from the Attorney General and the other two banking agencies referred to in this subsection."

However, when the District Court acts in the matter, the Bank Merger Act of 1966 of which the prior section is but a part clearly and unequivocally provides:

> "In any such action, the court shall review *de novo* the issues presented." (12 U.S.C. § 1828(c) (7) (A))

The court is clearly required to hold a trial *de novo;* statements made by the banking agencies, whether approving or disapproving the action, are patently irrelevant to the issues which Justice here seeks to present to the Court. Indeed, in a letter sent by Attorney General Katzenbach to Senator Patman as Chairman of the Banking and Currency Committee he stated that he wanted the district court proceedings to involve a "trial de novo of all issues in any such suit". *1966 U.S. Code Cong. & Admin. News,* 1868. There is no question here that the Court is not required to pay any deference to the agency findings and recommendations, that the substantial evidence test or any similar test is not to be applied. Justice Douglas in *United States* v. *First City National Bank of Houston,* 386 U.S. 361, clearly stated:

> "Indeed the 1966 Act provides that the Court in an antitrust action 'shall review de novo the issues presented.' 12 USC § 1828(c)(7)(A). It is argued that the use of the word 'review' rather than 'trial' indicates a more limited scope to judicial action. The words 'review' and 'trial' might conceivably be used interchangeably. The critical words seem to us to be 'de novo' and 'issues pre-

> sented.' They mean to us that *the court should make an independent determination of the issues.* Congressman Patman, the Chairman of the House Committee that drafted the Act, in speaking of this de novo review said that the court would '*completely and on its own make a determination* as to whether the challenged bank merger should be approved under the standard set forth in paragraph 5 (B) of the bill.' He added that the 'court is not to give any special weight to the determination of the bank supervisory agency on this issue.' " (386 U.S. at 368) (Emphasis added)

A similar statement was made by this Court in *United States* v. *Third National Bank in Nashville,* 390 U.S. 171 (1968):

> "The task of the district courts was to inquire de novo into the validity of a bank merger approved by the relevant bank regulatory agency to determine, first, whether the merger offended the antitrust laws and, second, if it did, whether the banks had established that the merger was nonetheless justified by 'the convenience and needs of the community to be served.' " (390 U.S. at 178)

Judge Shaw in rendering his opinion below did make an independent determination. He did not have before him the reports of the agencies or the Application to Merge because Justice never sought to introduce them and because all of the parties fully recognized that his review was de novo.[3] During his opening statement,

---

[3] When an officer of Second National was examined by deposition as to the context of the Application To Merge, counsel for the banks objected specifically thereto and the Justice Department attorney stated in response that "this may well be something that we will want to take up at the time of the trial . . ." (Ex. D-60, p. 145). The statement of the attorney for Justice at trial that "this is a trial de novo" clearly shows that the Department conceded that these materials could not be introduced. (Tr. 11)

counsel for the Justice Department made reference to the actions of the other banking agencies, but the Court was quick to remind counsel that this was a trial *de novo:*

> "I doubt very much whether the Court should be concerned at all about any opinion of any agency with respect to this merger. The case must be decided upon the evidence produced here and not on the basis of opinions that are not in the nature of expert opinions normally admissible in evidence. I am not ruling on it now. I am just bringing that to your attention . . .
>
> * * *
>
> . . . that the Court has the obligation to evaluate the facts independently of any prior opinions." (Tr. 10)

In response to this full statement by the Court, counsel agreed, "This is a trial de novo." (Tr. 11)

The unfairness resulting from the belated proffer of these materials is more than clear. Trial of the cause consumed some 11 days; some 37 witnesses appeared and testified; over 175 exhibits were submitted by the parties. During all of this time attorneys for the Justice Department were in possession of the Application to Merge, the transcript of the hearing before the Comptroller and the decision of the Comptroller and the various agency recommendations, and chose not to offer them in evidence. In their Post-Trial Brief they tried to accomplish by brief what they could not in the trial have attempted, they there used similar quotations from the Application to Merge wrenched out of context to buttress a case which otherwise on the record before the Court had clearly not been made. In our Post-Trial Brief we directed attention specifi-

cally to their presumptuousness in including these materials. (Defendant Banks' Post-Trial Brief, 23)

Last October plaintiff was given opportunity to supplement the record before Judge Shaw. But once again the Application and the reports were not placed in evidence.

The unfairness to the respondents is patent here. Even assuming that the materials could have been offered (which, of course, they could not), still defendants have been deprived of the opportunity of cross-examining the individuals who propounded the agencies' opinions as to the basis of their conclusions and, for that matter, their familiarity with the geographical area in question. Here we have the rankest of hearsay. The opinions stated were no doubt originally formed by unnamed, annonymous individuals, never cross-examined as to their purported expertise in the area. The facts on which the opinions are based are unknown; or worse, differ substantially in premise from the known facts which were presented on the record. The opinions were formed as to this specific case and with the knowledge that suit thereon might eventually be brought. Indeed, the opinions were formed as to the *ultimate* issue in the case. In summary, the agency reports constitute glorified hearsay, going to the ultimate issue in the case, and prepared with the suit in contemplation.

As to the recommendation of the Attorney General submitted to the Comptroller's office, there is an additional inequity in allowing reference to that document. Here, the recommendations and conclusions drawn constitute a self-serving declaration; the Justice Department is citing itself as expert and seeking to have

the court consider matters a trial de novo could never contemplate. Clearly, suit would not have been brought had Justice not reached an adverse decision as to competitive effect, but the materials upon which Justice reached that opinion have presumably already been put on the record during their affirmative case.

Another hidden inequity results from reference to agency reports which were filed with the Comptroller in 1967, some two years before the passage of the new banking law in New Jersey. That law has had considerable impact on the contours of the geographical market. Previously, a bank could only branch or merge with another bank in the same county. Now the State has been divided into three districts. Merging or branching can occur anywhere throughout the first district. Warren County is placed in the first district which also includes Hudson, Essex, Passaic, Morris, Sussex and Bergen Counties. (See 25a-27a) Combined these counties have an area of 2,015 square miles and a total population of 3,095,247 (*1969 New Jersey Legislative Manual*) Clearly, the agencies did not have opportunity to evaluate the impact of this change on the market and their conclusions could well have been vastly different if the expanded market potential of the first district had been considered.

II

MOTION TO AFFIRM

Pursuant to Rule 16, paragraph 1(c), of the Revised Rules of this Court, appellee, Comptroller of the Currency and the PNB and SNB move that the judgment of the District Court be affirmed on the ground that the questions raised by appellant are not new or novel and are so insubstantial as not to warrant further

argument. The issues as presented in the Jurisdictional Statement are self-created and do not at all reflect the evidence on the record or the treatment given that evidence in the opinion of Judge Shaw. Indeed, the issues as premised involve both a distortion of the evidence presented and a tortuous interpretation of the manner in which Judge Shaw treated the facts before him.

The position contended for by Justice does not take into account the competitive factors introduced in New Jersey by the 1969 Amendments to the banking and savings and loans laws.[4] These new amendments make Warren County where the defendant banks are located part of a seven-county district. Throughout this district branching and merger of commercial banks, savings banks and building and loans is permitted. N.J. S.A. 17:9A-19; 17:12B-26. This Court in *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 362, pointed out that in choosing a relevant market there must not only be an appraisal of the immediate impact of the merger upon competition, "but a prediction of its impact upon competitive conditions in the future."

In a hearing on the disposition of the statutory stay, facts were introduced to show the new law had trig-

[4] When submitting its report to the Comptroller with regard to the proposed merger of the Washington Trust Company, Washington, New Jersey into the National Newark & Essex Bank, Newark, New Jersey, the Justice Department fully recognized the significant changes in the market which the new law had produced and stated in this case that the merger would not have any significant effect on existing and potential competition. The Justice Department then clearly stated that "[the] recent broadening of the geographic boundaries of permissible branch office operation by commercial banks in New Jersey has induced substantial market extension activity, both by *de novo* branching and by merger". (GI30, Letter dated September 24, 1969, p. 3)

gered an explosion from which the dust has not yet settled. In 1968, for example, there were 22 applications for branches in the seven counties making up the first district. In the first nine months of 1969 there occurred 119 branch applications in the same area, over five times as many. (GI30)

It is in these circumstances that the plaintiff asks this Court to rule on the instant case. We submit that the circumstances of banking in New Jersey are changing so rapidly that the Court should not undertake the impossible task of judging a merger case in an unknown competitive climate. So volatile has the banking climate become in New Jersey that any decision by this Court would only serve as precedent for the past. The change in New Jersey banking law and the evidence of activity of the large banks in the First District (GI30) in merging and acquiring branches in said District makes this a moot case, not meriting review.

The First Question Presented

The first question presented by Justice is:

> "Whether in an antitrust action challenging a proposed merger of banks located in a community in which the banking business [5] is predominantly

---

[5] It should be noted that the BMA '66 does not contain the assumption evident in the question propounded by the Justice Department that the "banking business" is the relevant line of commerce. Comparison of paragraphs A & B of 12 U.S.C. § 1828(c) 5 clearly shows that in paragraph B Congress omitted the reference to the banking business and did not include any coordinate reference to "line of commerce".

> "(5) The responsible agency shall not approve—
>
> (A) any proposed merger transaction which would result in a monopoly, or which would be in further-

local the court may properly refuse to consider the merger's probable effect on competition in that community because, on the basis of evidence of general social and economic integration, it deems

ance of any combination or conspiracy to monopolize or to attempt to monopolize the *business of banking* in any part of the United States, or

(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served."

Such an omission indicates a legislative intention to view mergers challenged under Section 7 of the Clayton Act consistent with the commercial realities faced by the two banks.

The commercial realities of the marketplace, the reasons leading to the omission of the term "banking business" and to the omission of any reference to "line of commerce", are more than evident when reference is made to Paul S. Nadler's *Commercial Banking In The Economy* (Random House, 1968). In this study Paul Nadler, an Associate Professor of Finance at the Graduate School of Business Administration at New York University states:

> "Banks do not compete only with other banks. Except for the holding of demand deposits and the consequent ability to create money, each bank finds itself competing in every area of lending with the various financial intermediaries, with the money and capital markets, with the ability of corporations to finance themselves through internal generation of cash, and with government financing units. (at 176)
>
> • • •
>
> The entire financial community is engaged in a trend toward what might be called *scrambled finance*, each type of institution becoming more like its competitors, and each bank and financial intermediary competing more with other institutions in its own industry as well as with institutions in other phases of the financial structure." (at 177)

> the relevant geographic market to be a broad multi-community area."

Justice in its argument juxtaposes two ideas: (1) that "general, social and economic integration should not be dispositive [in defining a market] though in a given case it may be relevant" (Jurisdictional Statement, 17) and (2) that the appropriate geographic market is "where the effect of the merger will be direct and immediate," citing *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 357. Justice somehow divines that there is a discrepancy between these two. However, it is only "general social and economic integration" which provides the factual basis for a determination as to where the impact is "direct and immediate". Indeed, Judge Shaw in reaching his decision in this case followed the approach in *Philadelphia;* he looked to "where the banks in the relevant geographic market are directly and effectively competitive". (10a) Judge Shaw fully embraced the conclusion of the Supreme Court in the *Philadelphia* case that "attention must be focused upon a *small market* both in terms of area and in products and services of the merged bank." (Emphasis added) (12a)

In *Philadelphia,* the Court after discussing the "direct and immediate" test (374 U.S. at 357) turned in fuller explication of that test to *Tampa Electric Co.* v. *Nashville Coal Company,* 365 U.S. 320, 327, 5 L. ed 2d 586, 81 S. Ct. 623 and quoted the following with emphasis by the Court:

> ". . . the 'area of effective competition in the known line of commerce must be charted by careful selection of the market area in which the seller operates, *and to which the purchaser can prac-*

tically turn for supplies." (374 U.S. at 359) (Emphasis by Court)

The Justice Department in its proposed question somehow seeks to forget the emphasis of the Court, to forget the voluminous evidence in the record as to where customers of PNB and SNB can turn to do their banking business; and to ignore the related evidence as to the mobility of the population, shopping patterns, commuting patterns and travel time statistics, all of which have been fully laid out on the record. (Tr. 174-175, 718-719, 816-817, 844-45, 979-80, 998-99, 1084, 1102-04, 1107-8, 1127-28, 1172, 1196, 1205, 1214, 1297-99, 1363, 1385, 1428-29, 1484, 1513, Ex. D-32, D-61, Ex. G-53 at 241.)

Definition of the market in this case clearly involves changing parameters of concern. When the Justice Department sought its stay of the merger pending the disposition of this appeal and sought to place various supplemental information on the record, there was also placed on the record evidence of the impact of the change in the New Jersey banking laws on competition in the area. Now, as noted before, the two banks are in a banking district including some 82 banks with total deposits of 7.3 billion. (GI30, Report by the Board of Governors of the Federal Reserve System, p. 2) The resulting bank will have 0.61% of total deposits in this district. (GI30, Commercial Banks In The First Banking District Of New Jersey Listed By Deposit Size as of June 30, 1969, at p. 2) The new district runs from the Hudson River to the Delaware River and includes some of the most populous counties in the State.

The seven-county area comprising the first district, on any basis looking to customer alternatives, clearly

approximates more closely the area of effective competition than does any limited area such as Phillipsburg-Easton and environs proposed by Justice before this District Court. In determining that the market included the four-county area in *Philadelphia,* this Court noted that it

> ". . . would seem to roughly delineate the area in which bank customers that are neither very large or very small find it practical to do their business." 374 U.S. at 361

The practicalities of the situation call to the forefront the facts of the case, and it is these which Justice now seeks to forget. In *Philadelphia* however the Court found that the facts supported a four-county market, one containing some 1420 square miles and 3.4 million people. Here Justice would like to remit the PNB and SNB to Phillipsburg[6] and environs or to Phillipsburg-Easton and environs, infinitesimally small areas with a meager population.[7] In contrast thereto the Court in *United States* v. *Third National Bank in Nashville*, 390 U.S. 171 considered a bank in Davidson County which has an area of 427 square miles and a 1960 census population of 399,743. (GI1)

The change in the contours of the banking market in New Jersey is already evidenced by the incursions of large Newark banks into Warren County. The National Newark & Essex with deposits of over 579

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[6] The population of Phillipsburg was erroneously stated in the Jurisdictional Statement to be 30,000. (p. 4) The correct figure, as taken from the 1960 census by Judge Shaw, is 18,502.

[7] Phillipsburg and environs as defined by the Justice Department contained a population of 28,500 in 1960. The population of Easton and environs in 1960 was 60,000. (Ex. D-15)

million has taken over the Washington Trust Company with offices in Washington, Oxford and White Township. (GI30). The First National State Bank is using a holding company to take over the Warren County National Bank with offices in Washington and Hackettstown. (GI30)

PNB and SNB entered their merger agreement in April 1967. Expanded branch banking was in the offing. They are merging clearly with the hope that a stronger bank will be able to resist the incursion of large first district banks into Warren County. In so doing they come clearly within the contemplation of the Court in *Philadelphia* when, in distinguishing the situation of Philadelphia National and Girard from ours it said:

> "This is not a case, plainly, where two small banks in a market propose to merge in order to be able to compete more successfully with the leading firms in that market." (374 U.S. at 370-371)

But those are the facts here. And it is those facts which the Justice Department wishes to forget.

The vagueness evident in the first issue proposed presents considerable difficulty in dealing with its substantiality. If Justice means that general social and economic factors are not to be considered in defining a market, then it seems that its proposed analysis flies directly in the face of cases like *United States* v. *Von's Grocery Company*, 384 U.S. 270 (1966) and *Brown Shoe Company* v. *United States*, 370 U.S. 294 (1962) Justice would then be turning its back on the application of the "usual antitrust analysis" of the market which it sought and which was held to apply in *Nashville*. In any case, the proposed issue, if its

purport can at all be grasped, appears to be insubstantial on its face.

The issue as proposed by Justice is really only a thinly veiled attempt to question the factual findings of Judge Shaw, an attempt to have this Court make an extensive review of the record to see whether his factual findings are clearly erroneous. Clearly this case is not one which merits review.

The Second Question Presented

The second question proposed by Justice is equally devoid of merit. It, in effect, asks whether the convenience and needs accruing to the benefit of the public in a portion of the geographical market, the "community", can ever, on the facts, be sufficient to outweigh any conceivable anticompetitive effect in the "section of the county" found to be an economically significant market. The question reads:

> "Whether, in such an action, the court's consideration of the 'convenience and needs of the community to be served' is *legally insufficient* if the 'community' whose 'needs' are considered is *narrower* than the relevant geographic market in which the anticompetitive effects of the merger are measured." (Emphasis added)

It should be noted at the outset that there was a complete failure of proof as to anticompetitive effect; that the appellant, as was incumbent on him, did not show the merger to be anticompetitive. Unless the appellant prevails on its first proposed question, there is no need to consider the others at all. They are merely matters of defense. Thus, the Justice Department is forced to rely fully on its first question to sustain its burden of showing that the questions raised

are substantial. Since the lower court did not find any anticompetitive effect, matters of defense cannot be considered unless the appellant prevails on its first question looking to the use made by Judge Shaw of general social and economic factors in delineating a market. As noted before, both the case law and the facts on the record wholly support the market determined by the lower court.

The court below indicated there was no trend toward concentration, no existence of any undue concentration and thus there "can be no *presumptive* inference of anti-competitive effect. (27a) (emphasis by the Court) It further pointed out that the evidence did not support Justice's theory that mergers tended to increase interest on loans and to decrease interest paid on deposits. (27a) The Court concluded that there was a "preponderance of evidence to support a conclusion that the merger would have a procompetitive effect" if the merged bank adopted aggressive policies. (28a) The Court concluded that plaintiff "failed to sustain its burden of proof to establish by a preponderance of the evidence that the merger would have any measurable anticompetitive effect". (28a)

Appellant having failed to establish its case, it was not incumbent on the defendants or the Court to decide the convenience and needs defense, which herein is put forth as an "even if" argument. This Court, it is submitted, must conclude that Justice by a fair preponderance of the evidence proved the merger to be anticompetitive before it gives any consideration to the second question presented.

In the second question the Justice Department seeks to convert a question of fact (whether the convenience

and needs of the community clearly outweigh the anti-competitive effect) into a question of legal sufficiency. Justice would have us look to two concentric circles; one to be labelled Phillipsburg, the other to be called the geographical market arrived at in the opinion of Judge Shaw.

But just as a pure question of logic, "of legal sufficiency", advantages in the core of the market can exceed anticompetitive effect in the whole of the market. Assuming for purposes of this motion that Judge Shaw only looked to Phillipsburg, then once he had determined that the convenience and needs in certain portions of the community exceeded the anticompetitive effect, there was no need to go further. He could determine that the scale clearly favored the convenience and needs of the community; he need not determine that it overwhelmingly favored such needs. Thus, simply as a question of the preponderance of the evidence which this Court should not be called upon to determine, the question posed is one which does not merit review. The question posed answers itself. The judge need not go any further once he determines that the clear weight of the evidence favors the convenience and needs of the community.

Appellant argues that this Court has not heretofore defined the difference between "section of the country" and "community", and that therefore the appeal should be allowed so the Court can clarify the meaning of these terms. The insubstantiality of this proposal is clearly demonstrated by the fact that this Court has already fully considered the difference between "community" and "section of the country" in another section 7 case and fully disposed of the matter. The issue thus is neither new nor novel.

Reference to the legislative history of Section 7 of the Clayton Act is necessary here. When originally enacted in 1914 it referred in pertinent part to restraint of commerce "in any section or community". The 1950 amendment resulted in deletion of the reference to "community" and adoption of the present language as now incorporated in B.M.A. '66. In *Brown Shoe Company* v. *United States,* 370 U.S. 294 (1962) this Court in an opinion by Chief Justice Warren fully considered the import of the change in terminology:

> "The deletion of the word 'community' in the original Act's description of the relevant geographic market is another illustration of Congress' desire to indicate that its concern was with the adverse effects of a given merger on competition only in *an economically significant* 'section' of the country." (Id. at p. 320) (Emphasis added)

By footnote the Court fully expounded the legislative history of the Act and the reasons for reaching this result. The distinctions made at the time, of course, fully expose the error of the Justice Department in now seeking to make Phillipsburg or Phillipsburg-Easton and environs the "community" within which to judge anticompetitive effect:

> "The Federal Trade Commission's amendment, see note 30, supra, included the phrase 'where . . . in any section, community, or trade area, there is reasonable probability that the effect of such acquisition may be to substantially lessen competition." Congressman Kefauver urged deletion of the word 'community' on the ground that it might suggest, for example, that a merger between two small filling stations in a section of a city was proscribed. Hearings on HR 515, at 260. And see also 96

> Cong Rec 16453. The fear of literal prohibition of all but de minimis mergers through the use of the word 'community' was also cited by the Senate Report as the basis for its retention solely of the word 'section.' S Rep No. 1775, 81st Cong, 2d Sess 4. The reference to 'trade area' was deleted as redundant, when it became clear that the 'section' of the country to which the Act was to apply, referred not to a definite geographic area of the country, but rather the geographic area of effective competition in the relevant line of commerce. See S Hearings on HR 2734, at 38-52, 66-84, 101-102, 132, 133, 144, 145; HR Rep. No. 1191, 81st Cong, 1st Sess 8; S Rep. No. 1775, 81st Cong, 2d Sess 4, 5-6. The Senate Report cited with approval the definition of the market employed by the Court in Standard Oil Co. v. United States, 337 U.S. 293, 299 note 5, 93, L ed 1371, 1378, 69 S Ct. 1051." (370 U.S. at 320 n. 35)

Expanding on this distinction, the Court continued:

> "The 1950 amendments made plain Congress' intent that the validity of [mergers] was to be gauged on a broader scale; their effect on competition generally in an *economically significant market.*" (p. 335)

It was the clear intent that:

> "The geographic market selected must, therefore, both 'correspond to the commercial realities' *and* be economically significant." (Id. at pp. 336-7) (Emphasis added)

When Mr. Justice Brennan turned to the banking situation in *Philadelphia* he confirmed the applicability of this reasoning in *Brown Shoe.* He noted defendant's concession that "the four county area has *sufficient commercial importance* to qualify, under Brown

Shoe Co. supra. (370 U.S. at 336, 337),[8] as a "section of the country" within the meaning of § 7". (374 U.S. 321, 359 *n.* 36 (1963) (Emphasis added)

In the light of the legislative history and the intervening opinions of this Court in *Brown Shoe* and *Philadelphia,* there is no question that Congress fully understood the difference between "community" and "section of the country" when it passed B.M.A. '66. There is absolutely no need to review this distinction again. Sound, established rules of statutory construction apply the same meaning to statutes *in pari materia.* There is no need for this Court to reaffirm again the applicability of this rule.

The difference in terminology between "community" and "section of the country" also supports the conclusion that Justice's first issue, looking to whether general economic and social factors can be used to define a market, also lacks substance and should not be considered by this Court. "Section of the country" as noted in the *Brown Shoe* and *Philadelphia* opinions refers to an "economically significant" area, one that has "sufficient commercial importance." But as the exhibits in this case show the enumerated towns in Phillipsburg-Easton and environs as proposed by the Justice Department for its "economically significant" market only have a population of 88,500, or five ten-thousandths of the total population of this country. (Exh. D-15; 1970 World Almanac, 252) Justice proposes to fragment the country into literally thousands of tiny markets and to view anticompetitive effect in each. But are they economically significant, are they

[8] These are the same portions of the *Brown Shoe* opinion quoted above.

of sufficient commercial importance? The purported issue is frivolous, especially in light of the clear legislative history and the prior Supreme Court decisions completely disposing of the issue.

The Third Question Presented

In the final question presented the Justice Department asks this Court to determine whether the lower court adequately evaluated the convenience and needs test in looking to whether there was a less anticompetitive means to achieve the same benefits. The question reads:

> "Whether, in any event, the court below erred in its determination of the convenience and needs issue by failing adequately to consider whether the same benefits could be achieved by less anticompetitive means." (Jurisdictional Statement, 4)

This question also is devoid of merit; the issue as stated does not present any new question to be resolved by the Court.

In *United States* v. *Third National Bank in Nashville*, 390 U.S. 171, (1968) a case in which the lower court had failed to apply the appropriate Section 7 Clayton Act formula this Court fully laid out the applicable alternative means test. There the Court said that it was:

> ". . . incumbent upon those seeking to merge in this case to demonstrate that they made reasonable efforts to solve the management dilemma . . . short of merger with a major competitor *but failed in these attempts, or that any such efforts would have been unlikely to succeed.*" (390 U.S. at 189) (Emphasis added)

This clear statement of the issue was followed by Judge Shaw in his opinion:

> "The government stresses the argument that neither PNB nor SNB have made any genuine effort to recruit specialists to head a commercial and industrial loan department or a trust department, but the evidence does establish that such specialists are not easy to find and not likely to be induced to accept employment for a small salary or with a very small bank. It is, however, *clear from the evidence* that neither bank can afford the expense of employing well trained specialists to head a loan and trust department. There was tentative exploration of the possibility of obtaining qualified bank officers which ceased when it became *clear that the expense was out of reach.* (30a-31a) (Emphasis added)

Justice would now have this court re-examine the evidence to see if it indeed was clear. (Tr. 551-559, 581-3, 880-1, 1164-6, 1228, 1375-76, Ex. G-84, pp. 289-90; Ex. G-53, pp. 234-5) A review on the facts is, once again, all that is sought here. As the transcript references indicate, there was more than ample evidence to support Judge Shaw's conclusions.

Let us look to some of the proposed alternatives suggested by the Justice Department. One proposed alternative is that of "a merger by one of the defendants with a bank in another city in the newly-created first banking district". (Jurisdictional Statement, 22 *n.* 19) Leaving for now the question of the straits within which this leaves the other of the defendant banks, let us look to the reasonableness of this basic proposal. The defendant banks agreed to merge in April 1967, some two years before the effective date of the new banking statute. Can we say *at that time* that such an alternative was *available?* Clearly it was

not. Is Justice to have the delay it has imposed on these two small banks over the last three years counted to its benefit when it takes its final appeal to the Supreme Court and now suggests alternatives never available at the relevant time? The very fact that Justice has made this proposal shows the utter insubstantiality of its proposed appeal. Its only function is to impose greater costs on these two banks in the hope that any merger for any small bank will become a truly uneconomic, unavailable alternative.

Other proposals made by Justice are mere palliatives, with no hope of curing the deep underlying problems facing these two banks. They propose the use of stock dividends instead of cash dividends and internal development to provide opportunity for growth. (Jurisdictional Statement, 21, 22) Officers of two banks, one in Phillipsburg and another in Hunterdon County, testified favorably for the merger. On questioning they indicated they had given stock dividends as well as cash dividends. Appellant now uses this testimony to suggest an alternative PNB and SNB should have used to raise their lending limit. However, this collocation of the facts put forth by Justice depending as it does on incidental statements in the record only shows the limitations of their argument. None of the alternatives would solve the total problem of these two banks.

The Justice Department suggests that PNB and SNB should have sought out each of the banks in the area and proposed merger. The ultraconservative policies of these banks, as referred to by Judge Shaw (p. 28a) show this would most likely have been futile. Now, of course, these banks are unavailable because of the enhanced opportunity to obtain a premium for

their stock from larger banks in the first district. Now, a Newark bank and the largest bank headquartered in Bergen County have already separately absorbed the two previously independent banks in Hackettstown (GI30). There is in this merger no premium to one bank as contrasted with the other. William F. Greenley, Jr., senior vice president of Fidelity Union Trust Company answered the question as to whether there were any premiums in the merger transaction (Tr. 555-6):

> "I think surprisingly in these things—you usually get into awful hassles as to—because some interested party wants to make a couple extra bucks, which you can't blame him for—but there was nothing like it in this picture. As a matter of fact, I think just on the statistical basis the actual settlement came down pretty close to what you would have done just doing it on a pen and pencil basis."

Furman Denton, executive vice president and cashier of the First National State Bank of New Jersey, stated he had a chance to examine the application to merge, that he thought the terms "were eminently equitable, that there did not appear to be any premium. And the sole objective appeared to be to put together two banks on a proportionately equal basis". (Tr. 1114-15)

By footnote Justice seeks the right to urge that the court erred in rejecting commercial banking as a relevant line of commerce.[9] (Jurisdictional Statement, 3 *n.* 1) By separate footnote, however, they admit that the error "did not affect the result in the case" and therefore they "do not urge it as a question independently warranting plenary review". The question

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[9] See Paul S. Nadler, *Commercial Banking in the Economy* (Random House 1968) pp. 173-78.

is not dispositive in this case and by Justice's own admission should not lead this Court to note probable jurisdiction unless some separate ground raised appears substantial.[10] However, defendants question the practice of Justice in putting defendant banks to the expense of briefing and arguing a question which all admit is not dispositive.

III

MOTION TO ADVANCE THE CAUSE FOR EARLY ARGUMENT

Pursuant to the rules of this Court defendant banks and the Comptroller of the Currency move the Court that it schedule the cause for early argument. The Court need only pass on this motion if it decides not to affirm the Court below. Persuasive reasons exist to justify this request.

The agreement to merge was entered into in April of 1967. Application to approve the merger was made to the Comptroller on May 1, 1967. A hearing was had before the Comptroller on August 14, 1967. The Comptroller approved the merger in November of 1967. The United States filed suit in the District Court on January 16, 1968. An eleven-day trial was had in September 1968. The District Court judge filed his opinion and judgment was entered on October 20, 1969. The notice of appeal was filed on November 28, 1969 and the jurisdictional statement was filed January, 1970. Unless the matter is expedited the decision may be delayed in this Court until 1971—four years or almost four years after the initiation of merger efforts.

It takes no imagination to realize from a mere recital of the proceedings thus far how much time of

[10] Defendants claim that this question cannot be considered unless the court finds that the first question posed is substantial.

officers and bank personnel has been expanded, how much expense involved and how much delay in hiring needed executives has occurred while awaiting the outcome of this suit. There is even more urgency that a final determination be had by reason of the 1969 banking and savings and loan legislation setting up a seven-county banking district, supra pp. 11-14, 17. It is imperative with mergers and branching on the increase in the first district (GI30) that both banks be able to plan to meet the changing competitive factors.

As we have shown previously, other banks in the first district are already expanding into Warren County.[11] Maintaining the status quo pending final determination in this Court is most difficult for the banks and deprives the area of services from which they could well profit.[12] An early decision would put an

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[11] Justice takes exception to Judge Shaw's opinion when he states that there are "many locations (in the New Jersey part of the geographic market) where either a bank or a branch bank could be established". (App. A, *infra*, p. 27a) (Jurisdictional Statement, 14) Justice seems to have the impression that "home office protection" relates to all communities under 7500. However, the law only prevents entry by branching. Justice has apparently forgotten that a bank can enter by establishing a new main office, whether or not there is another main office or branch in the community.

[12] As Paul S. Nadler in *Commercial Banking In The Economy* states:

> "The banks recognize that if they wish to prosper, their role in the economy must be no longer merely commercial banks—the outgrowth of goldsmiths—but rather suppliers of full financial services—meeting needs of customers never dreamed of when banking was developed, and prepared to meet future customer needs that have not yet even been formulated."

It is these new services which the Bank Merger Act of 1966 in part referred to in requiring consideration of the convenience and needs of the community.

end to the harassment of two small banks by the superior resources of the Anti-trust Division. The dispute should be resolved early and soon so that there can be sound planning for the future.

It is respectfully requested that the motion to strike be granted and the judgment of the District Court be affirmed. In the alternative it is requested this case be scheduled for early argument.

Respectfully submitted,

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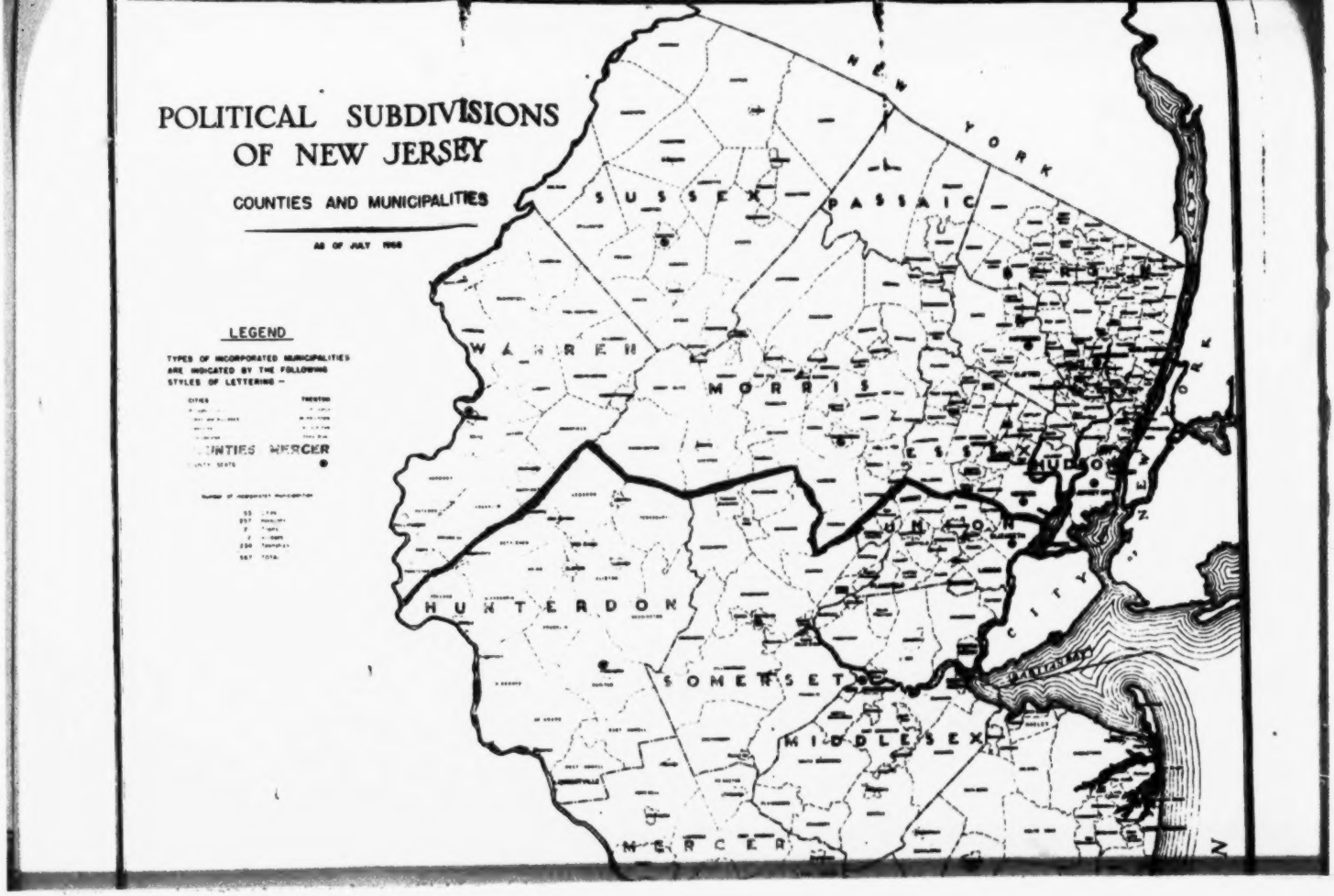
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No. 1093

In the Supreme Court of the United States

OCTOBER TERM, 1969

UNITED STATES OF AMERICA, APPELLANT

v.

PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY, SECOND NATIONAL BANK OF PHILLIPSBURG, AND WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO APPELLEES' MOTION TO STRIKE

ERWIN N. GRISWOLD,
Solicitor General,
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Washington, D.C. 20530

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While the government's position on the merits is adequately set forth in our Jurisdictional Statement, we deem it appropriate to reply to the appellees' motion to strike. Appellees jointly move that all references to certain extra-record public documents [1] lodged by the government with this Court be stricken. We believe that this motion should be denied.

[1] The documents are the appellant banks' application in this case to the Comptroller of the Currency for approval to merge, the Opinion of the Comptroller, and the reports on the merger proposal submitted to the Comptroller by the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Attorney General.

Only to underscore the importance of plenary review in this case has our Jurisdictional Statement "not undertaken to make a fetish of sticking squarely within the four corners of the specific record." *United States* v. *Pierce Auto Freight Lines*, 327 U.S. 515, 530; cf. *Boynton* v. *Virginia*, 364 U.S. 454, 459–463. Accordingly, although we disagree with appellees' suggested application of classic evidentiary precepts,[2] we do not undertake an extended refutation here. Rather, we submit, this appeal presents "matters of substance and is not to be trivialized by formal objections that have no substantial bearing on the ultimate rights of parties." *Market Street Ry. Co.* v. *Railroad Commission*, 324 U.S. 548, 562; cf. *Arnold Productions, Inc.* v. *Favorite Films Corp.*, 291 F. 2d 94, 95 n. 2 (C.A. 2).

Documents comprising mandatory steps in the total merger transaction proceeding (12 U.S.C. (Supp. IV) 1828(c)(4)), which are made public by statute[3] and

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[2] Compare, Appellees' Motion at p. 9, with Record, *United States* v. *Philadelphia National Bank*, No. 83, October Term, 1962, pp. 1019–1021 (reports accepted into evidence), 374 U.S. 321, 361; *United States* v. *First City National Bank of Houston*, No. 914, October Term, 1966, Brief for the Comptroller of the Currency at 59, Brief for the Appellee Banks at 6, Brief for the United States at 83–134, 386 U.S. 361, 364–365. Cf. *Communist Party* v. *Control Board*, 351 U.S. 115, 128 (dissenting opinion); *Thompson* v. *Maxwell Land Grant Co.*, 168 U.S. 451, 456.

[3] Information Act, 5 U.S.C. (Supp. IV) 552; cf. 5 U.S.C. (Supp. IV) 301.

agency rules,[4] and by covenant,[5] and some of which are published,[6] ought to be freely available to this Court. Cf. *Panama Refining Co.* v. *Ryan*, 293 U.S. 388, and Report of Argument, 2 U.S.L.W. 325. Copies of these public documents cited in our Jurisdictional Statement have been lodged by us with the Court solely for its convenience.

These documents are not, of course, submitted as evidence; we fully recognize that the district court must try all issues *de novo*, and that the opinions of the banking agencies are in no way binding upon it. *United States* v. *First City National Bank of Houston*, 386 U.S. 361. We note also, however, the statutory mandate that in an action attacking a merger transaction which the government alleges to violate Section 7 of the Clayton Act, "the standards applied by the court shall be identical with those that the banking agencies are directed to apply * * *." 12 U.S.C. 1828 (c)(7)(B). The views of the advisory banking agencies should, therefore, be of considerable interest to the

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[4] All the agency reports are public: 12 C.F.R. 261.4(b) (Federal Reserve); 12 C.F.R. 309.1(3)(i) (Federal Deposit Insurance Corporation); 12 C.F.R. 4.15(a)(2) (Comptroller of the Currency). The Federal Reserve has published an interpretation of the language it uses in its reports, 12 C.F.R. 250.182; 34 Fed. Reg. 11414 (July 10, 1969).

[5] The Application at p. 2 states:

> It is understood and agreed that this application may be made public in a public hearing or otherwise at the discretion of the Comptroller.

See, also, the Comptroller's general rule, 12 C.F.R. 4.16(a).

[6] The opinion of the Comptroller, quoting in part from the Application is published in 1967 Annual Report of the Comptroller of the Currency, 143, 145. A summary of the Attorney General's Report, as required (12 U.S.C. 1828(c)(9)(B)), is appended thereto. *Id.* at 147.

courts. The district court, over defendants' objection, was apprised of the administrative proceedings and agency opinions (Tr. 9–10). We see no policy of sound judicial administration to be served by an attempt to keep this Court in ignorance of them.

Moreover, we believe the wide divergence of view between the advisory agencies and the court below, in discharging their responsibilities under the Act, underscores the need for review by this Court. It is plain that standards of review of small bank mergers are not yet settled. A summary affirmance by this Court of a judgment based on the unorthodox approach of the court below would be duly noted by the bank regulatory agencies. It would be an important factor to be weighed by them in passing upon future merger transactions, many too small to be individually litigated without substantial burden upon the applicants and the government.

The motion to strike should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1970.

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BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1093

UNITED STATES OF AMERICA, APPELLANT

v.

PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY, SECOND NATIONAL BANK OF PHILLIPSBURG, AND WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (App. 667) is reported at 306 F. Supp. 645.

JURISDICTION

The judgment of the district court (App. 701) was entered on October 20, 1969, and a notice of appeal to this Court was filed on November 28, 1969. Probable jurisdiction was noted on February 27, 1970

(App. 702). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act, 15 U.S.C. 29. *United States* v. *Third National Bank in Nashville*, 390 U.S. 171; *United States* v. *Philadelphia National Bank*, 374 U.S. 321.

STATUTES INVOLVED

The pertinent portions of the Clayton Act and the Bank Merger Act of 1966 are printed in the Appendix, *infra*, pp. 59-64.

QUESTIONS PRESENTED

1. Whether the district court erroneously rejected commercial banking as a relevant product or service market in which to test the competitive effect of bank mergers in small communities.[1]

2. Whether, in an antitrust action challenging a proposed merger of banks located in a community in which the banking business is predominantly local, the court may properly refuse to consider the merger's probable effect on competition in that community because, on the basis of evidence of general social and economic integration, it deems the relevant geographic market to be a broad multi-community area.

3. Whether, in such an action, the court's consideration of the "convenience and needs of the community to be served" is legally insufficient if the "community" whose "needs" are considered is narrower

[1] This question was preserved in the jurisdictional statement (J.S., p. 3, n. 1, p. 19, n. 17).

than the relevant geographic market in which the anticompetitive effects of the merger are measured.

4. Whether, in any event, the court below erred in its determination of the convenience and needs issue by failing adequately to consider whether the same benefits could be achieved by less anticompetitive means.

STATEMENT

1. The Proceedings

In April 1967, Phillipsburg National Bank and Trust Co. ("PNB") and Second National Bank of Phillipsburg ("SNB"), both with their headquarters in Phillipsburg, New Jersey (App. 668), agreed to merge. Phillipsburg is directly across the Delaware River from Easton, Pennsylvania, its twin city (App. 894). The two cities are in the northeastern part of the Census Bureau's Allentown-Bethlehem-Easton, Pennsylvania—Warren County, New Jersey standard metropolitan statistical area (hereafter "Lehigh Valley").

On May 1, 1967, the banks applied to the Comptroller of the Currency for approval of the transaction as required by the Bank Merger Act of 1966 (12 U.S.C. (Supp. IV) 1828(c), App. *infra*, pp. 59-60). Pursuant to Section 1828(c)(4), the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Attorney General each submitted independent reports to the Comptroller on the competitive factors involved.[2] The Federal Reserve Board concluded

[2] Copies of the Application for Approval to Merge, the reports to the Comptroller and the Comptroller's decision have been lodged with the Clerk of this Court. All of these are public documents.

that the overall competitive effect of the merger would be substantially adverse because it would eliminate a significant degree of competition in the Phillipsburg-Easton banking market and would reduce banking alternatives in Phillipsburg from three to two by merging that city's two largest banks (FRB Rep., p. 4). The Federal Deposit Insurance Corporation reported that the merger would harm competition in Phillipsburg-Easton, particularly in the Phillipsburg sector of the area; it noted that the resulting bank would be approximately three times the size of the remaining Phillipsburg bank and that the public's banking choices there would be reduced (FDIC Rep., p. 2). The Attorney General also concluded that the merger would have a significantly adverse effect upon competition in the Phillipsburg-Easton area.

The Comptroller approved the merger on December 18, 1967. He concluded that the other banking agencies and the Attorney General had defined both the product market and the geographic market too narrowly (Comp. Rep., pp. 3, 7-8). Treating most of the Lehigh Valley as the relevant geographic market and evaluating competition from 34 finance companies, 13 savings and loan institutions and insurance companies as well as 38 commercial banks in this broad area, he determined that there would be no significant anti-competitive effect (*ibid.*). He also concluded that the merger would provide the resultant bank with an opportunity for expansion and enable it to hire specialized management personnel (*id.* at 9).

On January 16, 1968, the United States filed the present suit in the district court charging that the

proposed merger might substantially lessen competition in violation of Section 7 of the Clayton Act (App. 3-7). This automatically stayed the merger's consummation. 12 U.S.C. 1828(c)(7)(A). The Comptroller intervened as a defendant (App. 14). After an eleven-day trial in September 1968 (App. 1-2), the district court held that the proposed merger was lawful (App. 700), and dismissed the complaint.[3] The court continued the statutory stay pending disposition of this appeal (App. 701).

2. Bank-Customer Relations in Phillipsburg-Easton

Phillipsburg, New Jersey, is an established industrial city of 18,500 inhabitants situated on the Delaware River in the southwestern corner of Warren County, New Jersey. Including the city's immediate environs,[4] the population of the Phillipsburg sector (hereafter "Phillipsburg") was approximately 28,500 in 1960 (App. 678-679). While the city's population has been static for a long period, the surrounding suburbs have been growing steadily in population, commerce and industry (App. 679-680; 261-263).

Easton, Pennsylvania, directly across the Delaware River from Phillipsburg, is a larger industrial city of 32,000 people. Including the city's surrounding com-

[3] At a hearing prior to the entry of judgment for the defendants, the record was reopened and evidence was admitted relating to changes in State banking law that took effect since the trial (App. 580-595).

[4] Lopatcong, Pohatcong, and Greenwich townships, and Alpha Borough.

munities,[5] the Easton sector (hereafter "Easton") had a total population of 60,000 in 1960. As in Phillipsburg, the city's population has remained stable while its environs have grown in population, industry and commerce (App. 679-680; 287-288).

Phillipsburg and Easton are linked by bridges, one a free bridge directly connecting the downtown areas of the two cities, and the other a toll bridge located just north of the main business districts on an interstate highway for which ticket books reducing the toll to less than three cents a crossing may be purchased (App. 45, 115, 229, 435-436). The two cities were described by a Phillipsburg businessman as "in effect * * * one town" (App. 287).

The Lehigh Valley, in which Phillipsburg and Easton are located, is an area of approximately 1,000 square miles, which also includes the cities of Bethlehem, Pennsylvania (population 55,325), thirteen miles west of Phillipsburg; Allentown, Pennsylvania (population 108,347), eighteen miles west; and Nazareth, Pennsylvania (population 6,209), twelve miles northwest (App. 678-679, 803-804, 894).

There is considerable mobility among the residents of the area. Residents of Phillipsburg shop in Easton and vice versa, and drive to the larger towns as well (App. 45, 58, 70, 224-225, 286-288, 291-292, 366-367, 386-387, 499-500, 634-635). The labor force is also mobile; many residents of Phillipsburg and Easton

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[5] The townships of Forks, Williams and Palmer, and the boroughs of Wilson, West Easton, Glendon, Stockertown and Tatamy, all in Northampton County, Pennsylvania (App. 677).

drive to work elsewhere, sometimes across the river (App. 193-194, 423, 432-433, 814-815). Nevertheless, as a Bethlehem banker testified, "the three cities, Bethlehem, Easton and Allentown have developed pretty independent cultures, and people do cross lines and so forth and it is integrated socially and economically, but not nearly to the extent that you might guess" (App. 104).

Although the Lehigh Valley contains 38 banks,[6] customer preferences for local service and prevailing conservative banking practice tend to limit the bulk of each institution's business to its primary service area (App. 29, 57-58, 62, 78-80, 81, 89, 131-132, 258, 399, 468, 554-555, 564-565, 652). Individual depositors in this area choose their banks primarily on the basis of convenience to their residence (*e.g.*, (App. 85, 201, 257, 263, 273, 665); small businessmen also tend to prefer banks in their local community (App. 277-278, 290, 326-327, 355, 375, 421-422, 430-431, 434). Large commercial and industrial borrowers, investors of sums in excess of $5,000 and settlors of trusts, however, are more likely to shop on a regional or even national basis; and as the amounts involved increase, the significance of local preference declines (App. 90, 100, 165, 235-236, 333-334, 339-340, 353-354, 355-356, 369-370, 487, 489-491, 510-512, 528, 600, 653).[7]

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[6] 1969 Statistical Abstract of the United States, p. 892.

[7] For larger investors, significantly higher interest rates may make a difference. The Girard Trust Bank's branch in Riegelsville, Pennsylvania, 10 miles from Phillipsburg, offered a 5 percent investment bond sold mainly in $5,000 multiples,

Small banks, such as PNB and SNB, are patronized principally by small depositors and borrowers[8] to whom the convenience of one-stop banking (App. 181, 653) and the advantages of good relationships with a local banker are important (App. 58, 106, 114, 271). A customer who uses one service usually looks to his bank for others as well, and is encouraged to do so (App. 63-64, 77, 119, 146, 181, 183; see App. 615). Checking and savings accounts are likely to be maintained in the same local bank even when higher savings interest is available elsewhere (App. 38, 520, 624, 635, 653), and an established depositor expects, and sometimes receives, favorable consideration as a small borrower (App. 22, 119, 280).

The merging banks reflect this pattern of predominantly small customers with a local orientation characteristic of banks in relatively small communities (App. 83-84, 133-134) and particularly in the Lehigh Valley trading area (App. 37-40, 83-84, 90, 100, 133-134, 137-140, 759-760, 788). For example, 74 percent of PNB's number of total deposits, and 72 percent of SNB's, are less than $1,000; and 96 percent and 97 percent, respectively, are less than $10,000. Similarly, 76 percent of PNB's number of loan accounts,

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and mailed promotional literature to Phillipsburg-Easton attorneys, physicians and morticians in December 1967. It is estimated that this has attracted some 3 percent of total Phillipsburg-Easton deposits. See App. 235-236, 603-604.

[8] More than 80 percent of the number of all deposit accounts in banks with total deposits of between $10 million and $25 million are less than $1,000. Federal Deposit Insurance Corporation, *Summary of Accounts and Deposits in All Commercial Banks*, 4 (1968).

and 58 percent of SNB's, are less than $2,500, and 94 percent and 96 percent, respectively, are less than $10,000 (App. 725-726, 733-734). Banks elsewhere in the Lehigh Valley, including banks within 10 or 14 miles of Phillipsburg-Easton, derive relatively little business—"a few scattered accounts" (App. 55; see App. 74)—from that community (App. 53-57, 64-68, 96-98); and the Phillipsburg-Easton banks similarly do relatively little business outside that area (App. 31-32, 37-40, 120-125). The vast bulk of the merging banks' deposits and loans originate in Phillipsburg-Easton: 91.6 percent of PNB's total deposits and 78.6 percent of its total loans; 92 percent of SNB's total deposits and 87.2 percent of its total loans (App. 725-738, 817-818; see n. 29 *infra*, p. 37).

Even within Phillipsburg-Easton, banking is localized in each of the two communities (App. 198-204). For example, the Easton branch of Nazareth National Bank in Forks gets no business from Phillipsburg (App. 78, 86). Although Phillipsburg businessmen regard Easton as an alternative credit source, they strongly prefer to borrow from banks in Phillipsburg (*e.g.*, App. 421, 434, 490-491, 636).[9] Of the merging banks, Phillipsburg National derived only 10.9 percent of its total time and savings deposits from Easton, and Second National only 9.6 percent (App. 731-732).

There are several indications that the banks in Phillipsburg-Easton enjoy substantial insulation from outside competition. Nearly every one of the approxi-

[9] State boundaries also contribute to localization of banking business (App. 62, 78, 93, 130, 201, 207, 606-607).

mately 8,500 families in Phillipsburg deals with one of that community's three commercial banks (App. 176). Banks outside Phillipsburg-Easton rarely solicit or advertise there except to the extent that audiences elsewhere are served by media also serving Phillipsburg-Easton (App. 54, 77, 87-88, 99, 252, 266, 559, 604-605). Phillipsburg-Easton banks similarly rarely solicit outside their area (App. 43, 79, 132-133, 228, 627, 633).[10] Finally, the Phillipsburg-Easton banks have increased their savings deposit accounts substantially even though their passbook savings rates were lower than the rates paid by other banks in the area (App. 753). As of December 31, 1967, Easton banks were paying only 3 percent and Phillipsburg banks 3½ percent interest, while banks in towns within a thirteen-mile radius were paying 4 percent (App. 63, 94, 116-117, 118-119, 198-201, 652-653).

3. The Merging Banks and the Banking Structure In Their Community

Phillipsburg has three commercial banks, and Easton has four.[11] Phillipsburg National, the acquiring bank, is the largest bank in Phillipsburg and the third largest bank in Phillipsburg-Easton. As of 1967, its assets were $23.9 million, its deposits were $22.4 million, and its loans and discounts were

[10] They advertise principally in the Easton or Phillipsburg local newspapers and generally do not solicit elsewhere for business (App. 723-724; GX-53 at p. 209; DX-60 at p. 163).

[11] Six of these seven institutions have their headquarters in Phillipsburg-Easton; the seventh is a branch of the Nazareth National Bank of Nazareth, Pa., which has a branch in Forks Township, a suburb of Easton (App. 740-751).

$14.5 million. It held 13.7 percent of Phillipsburg-Easton deposits and 15.8 percent of the community's loans and discounts. Between 1957 and 1967, it doubled its assets, doubled its deposits, and tripled its loans and discounts (App. 752-753).[12] In addition to its main office in downtown Phillipsburg it operates two branches, both of which were opened in the suburbs of Phillipsburg in 1964 (App. 262, 642-643. See App. 627-628).

Second National, the acquired bank, is the second largest bank in Phillipsburg and the fifth largest bank in Phillipsburg-Easton. It is in direct competition with PNB (Merger App., n. 2, *supra*, p. 3). Its main office is directly across the street from PNB's, and its only branch is across the highway from Phillipsburg's Hillcrest office (App. 10, 15, 202). It had assets of $17.3 million, deposits of $16 million, and loans and discounts of $10.5 million in 1967. It accounted for 9.8 percent of Phillipsburg-Easton's total deposits and 11.4 percent of its loans and discounts (see p. 13, *infra*). It has also grown rapidly in the last decade, increasing its assets 82 percent and its deposits 86 percent, and tripling its loans and discounts (App. 752; see App. 775-776).

Both of the merging banks offer the wide range of services customarily available from commercial banks, including demand deposits, savings and time deposits, consumer loans, installment loans, commercial and industrial loans, real estate mortgages and trust serv-

[12] Its rate of growth in the preceding five years exceeded that of the other two Phillipsburg banks (App. 754-756, 775-776).

ices, safe deposit boxes, escrow services and utility bill collections (App. 174, 246, 705). The ratio of their loans to deposits is higher than that of any other bank in Phillipsburg-Easton (App. 764). As is true of other Phillipsburg-Easton banks, a substantial volume of their loans is in real estate mortgages (*e.g.*, App. 39-40, 656-657, 764; see *supra*, pp. 7-8); business loans, both real estate and commercial or industrial, represent 22.2 percent and 21.2 percent respectively of each bank's loans (GX-86 p. 2; see App. 763-764; cf. App. 100).

As previously noted (*supra*, pp. 8-9), the services of these two banks are oriented primarily toward small customers. Phillipsburg National, for example, conducted the local grammar school savings program (App. 246), and, when other banks were refusing, offered both FHA and VA home financing and college tuition loans (App. 21, 73, 246-247, 269, 637). It also made numerous unsecured loans on the basis of character, which are very difficult for area borrowers to get elsewhere (App. 271-272, 280. Compare App. 58, 106, 114, 437-438). PNB increased its installment lending portfolio from $700,000 to $3 million within a five-year period, but then stabilized it in 1966 when its directors ordered loan officers to concentrate again on real estate mortgages (App. 413-414).

The structure of the commercial banking market in Phillipsburg-Easton, as of December 31, 1967, is summarized in the following chart:

[Dollar amo
(App. 739, 740-

BANK	No. of Offices	ASSETS Amount	Percent Phill.-East.	Percent Phill. Only	TOTAL DEPOSITS Amount	Percent Phill.-East.
Phillipsburg Nat.	3	$23.9	11.2	44	$22.4	11.8
Second Nat.	2	17.3	8.1	31.8	16	8.4
[Resulting Bank	5	41.1	19.3	75.8	38.4	20.2
Phillipsburg Trust Co.	2	13.2	6.2	24.2	12.1	6.4
Easton Nat. Bank & Trust	5	75.6	35.5	——	67.7	35.6
Northampton Nat. Bank Easton	1	23.2	10.9	——	19	10
Lafayette Trust Bank	2	27.7	13.0	——	24.3	12.8
Nazareth Nat. Bank *	1	32.0	15.0	——	28.7	15.1
Forks Township Branch	—	——	——	——	——	——
Totals	16	$212.8	100	100	$190.1	100

* While the deposit figures for Naz
branch, the assets and loan figure
total assets and loan figures of
the portion attributable to the b
somewhat understates the perce
including the appellees.

[Dollar amounts in millions]
(App. 739, 740-741, 742-743, 747)

ASSETS		TOTAL DEPOSITS			DEMAND DEPOSITS			LOANS		
Percent hill.-East.	Percent Phill. Only	Amount	Percent Phill.-East.	Percent Phill. Only	Amount	Percent Phill.-East.	Percent Phill. Only	Amount	Percent Phill.-East.	Percent Phill. Only
11.2	44	$22.4	11.8	44.3	$6.5	10.1	45	$14.5	15.8	48.9
8.1	31.8	16	8.4	31.7	4.6	7	31.3	10.5	11.4	35.2
19.3	75.8	38.4	20.2	76.1	11.1	17.1	76.4	24.9	27.3	84.1]
6.2	24.2	12.1	6.4	23.9	3.4	5.3	26.3	4.7	5.2	15.9
35.5	——	67.7	35.6	——	25.4	39.2	——	32.6	35.7	——
10.9	——	19	10	——	6.4	9.8	——	6.5	7.1	——
13.0	——	24.3	12.8	——	10.8	16.7	——	11.8	12.9	——
15.0	——	28.7	15.1	——	7.8	12.0	——	10.8	11.9	——
100	100	$190.1	100	100	$65	100	100	$91.5	100	100

* While the deposit figures for Nazareth National Bank are segregated by branch, the assets and loan figures are not. This chart, therefore, uses the total assets and loan figures of Nazareth National Bank (rather than the portion attributable to the bank's Easton branch) and accordingly somewhat understates the percentages attributable to the other banks, including the appellees.

These figures show that, of Phillipsburg-Easton's 7 banks, the two largest—Easton National Bank and Trust Co. and Lafayette Trust Co., both in Easton—account for 56 percent of the area's total deposits, 63 percent of total demand deposits and 44 percent (7 out of 16) of the banking offices. When Phillipsburg National's share is added, the three largest banks account for 69 percent of total deposits and 74.2 percent of demand deposits. In the Phillipsburg sector, which is served only by the two merging banks and their small competitor, the Phillipsburg Trust Co., PNB has 43.9 percent of total deposits and SNB has 32.2 percent; of loans and discounts PNB has 49.8 percent and its merger partner 34.9 percent. Of the 7 Phillipsburg banking offices, the merging banks control 5.

The combined bank would be the second largest in Phillipsburg-Easton with assets of $38.8 million (19.3 percent), total deposits of $36 million (20.2 percent), and loans and discounts of $22.8 million (27.3 percent). The total share of deposits held by the two largest banks would increase by 9 percent to 65 percent, and the share held by the three largest banks would increase 10 percent. The two largest banks would control 10 of the 16 banking offices, *i.e.*, 62.5 percent of the total. The impact in the Phillipsburg sector would, of course, be much greater (see App. 205, 207-208, 210). The banking alternatives in Phillipsburg would be reduced from 3 to 2, the combined bank would be three times larger than Phillipsburg Trust Co., and all but 2 of the banking offices in Phillipsburg would be controlled by one firm.

The record provides no indication that this substantial increase in banking concentration is likely to be alleviated by new entry into the market. Entry is restricted by both New Jersey and Pennsylvania banking statutes, and although recent changes in New Jersey law have made it possible for banks in the northern part of that State to enter the Phillipsburg area by merger, this would not increase the number of banking alternatives available in the community.[13] Expert testimony indicated, moreover, that

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[13] When the complaint was filed, New Jersey law prohibited the merger of banks located in different counties, and restricted branch banking to the county in which the parent bank was located (N.J. Stat. Ann. § 17:9A-19(B) (1963)). Additionally, a "home-office-protection" proviso precluded branching into cities in which another bank had its home office or into communities in which a bank or branch was already located (N.J. Stat. Ann. § 17:9A-19(B)(3) (1963)). Entry into "home-office-protected" communities could be effected only through merger with a bank in the community by a bank outside the community but in the same county.

Under a New Jersey banking statute, enacted on January 17, 1969, and effective July 17, 1969, that State is divided into three banking districts (N.J. Stat. Ann. § 17: 9A-19(F) (Supp. 1969)), of which Phillipsburg is in the first. Districtwide *de novo* branching and merger are authorized, subject to the retained "home-office-protection" proviso. In addition, the law precludes branching into communities of less than 7,500 in which a bank branch is already located. N.J. Stat. Ann. § 17: 9A-19(B)(3) (Supp. 1969).

No community on the New Jersey side of the Phillipsburg-Easton community is open to *de novo* branching from outside Warren County under the new statute because of the "home-office-protection" provision; entry by merger, however, is now possible for some 80 New Jersey banks located in the First Banking District (App. 588-589, 777-780). The question whether a national bank may avoid the operation of the State "home-office-protection" proviso by moving its "main office" into a protected community, while simultaneously "reopening" the former "main office" as a branch office, is

the chartering of new banks in Phillipsburg-Easton does not appear to be a significant probability (App. 211, 213-215).

There is no evidence that as a group the seven banks in Phillipsburg-Easton are failing to meet the community's banking needs. Four of the banks have loan limits which approach or exceed one-quarter million dollars and one has a limit of more than one-half million.[14] Requests for loans in the $100,000 to $500,000 category are infrequent (App. 137).[15] Large borrowers can, and do, satisfy their

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before the Court of Appeals for the Third Circuit in *Ramapo Bank* v. *Prospect Park National Bank & William B. Camp.* In *Marion National Bank* v. *Van Buren Bank*, 418 F. 2d 121 (C.A. 7, 1969), it was held that a similar action was precluded under analogous Michigan banking law.

Pennsylvania Banking Law is similarly restrictive, permitting new branching only in contiguous counties. Purdon's Pa. Stat. Ann. 7-904 (1965). See *United States* v. *Philadelphia National Bank*, 374 U.S. 321. Easton, located in Northampton County, is protected by Bucks County against branching by Philadelphia banks (App. 402-403).

[14] The legal lending limits of the commercial banks in Phillipsburg-Easton as of December 31, 1966, computed on the basis of ten percent of the sum of capital, surplus, and undivided profits, were as follows (App. 765):

PHILLIPSBURG NATIONAL	$100,701
SECOND NATIONAL	107,414
Phillipsburg Trust	53,167
Easton National Bank	587,049
Northampton National Bank	369,259
Lafayete Trust Bank	224,362
Nazareth National Bank	294,354

[15] PNB estimates that it receives 25 requests per year for loans which exceed its lending limits ($100,000) and SNB estimates that it receives 12 such requests per year. Only 25 of PNB's total of 5,566 loans, and only 17 of SNB's total of 2,235 loans, were for more than $50,000. (App. 271, 733-734.)

credit needs from outside the Phillipsburg-Easton area (App. 90, 290, 333, 339, 355, 412, 418, 426, 429, 440, 444-445).

Lending limits, which depend to some extent on the accounting method used to calculate them, are computed as 10 percent of capital and surplus of undivided profits and reserves, as approved by banking authorities (see 12 U.S.C. 24. But see App. 82, 89, 111, 136, 403-404). Using the most conservative method of calculation, PNB's lending limit was $90,000 and SNB's was $80,000 (App. 670. But see n. 14, *supra*, and App. 248, 713). The district court found that, when combined, the two banks would have a limit of $250,000 (App. 670), presumably by reason of changes in accounting methods relating to their capital structure.

4. The District Court's Decision

In dismissing the complaint, the district court held that the merger would not be anticompetitive in the broad geographic market it deemed relevant, and that "any conceivable anticompetitive effect" was in any event clearly outweighed by the merger's effects in meeting the convenience and needs of the community (App. 699).

Treating the product market first, the court recognized that "commercial banking" has been identified in all previous bank merger decisions of this Court as an appropriate line of commerce, but decided over the government's objection (App. 549-550) that a "detailed analysis of all the competitive banking services offered to the public by the merging banks is necessary in each case" (App. 669). The court excluded

from its consideration services not offered to any great degree by the defendants as well as services "in which competition from many sources [such as savings and loan associations, pension funds, mutual funds, government bonds, insurance companies and finance companies] is so widespread that no question of significant diminution of competition by the merger could be raised" (App. 675).

The lines of commerce selected by the court included checking accounts, savings accounts, certificates of deposit, personal loans, consumer installment loans and commercial loans of less than 100,000 dollars. Trust services, small real estate mortgage loans, automobile dealer financing, "large scale commercial inventory financing" and commercial and industrial loans in excess of 100,000 dollars were excluded. (App. 670.) While conceding that "[t]he approach adopted may not be orthodox," the court deemed it appropriate because, in light of the small size of the defendant banks and their high proportion of savings deposits to demand deposits, "this is not the usual bank merger case" (App. 675). The court did not, however, make specific findings as to the effect of the merger in each of the lines of commerce it had selected. Instead, presumably because some of the services it selected are unique to commercial banks, the court analyzed the merger's effects on competition only in terms of the product market it had earlier rejected—commercial banking (App. 681-689).

Turning to the question of the appropriate geographic market, the court rejected both of the government's proposed alternatives, Phillipsburg-Easton

and environs or Phillipsburg and environs (App. 677).[16] It chose instead an area slightly smaller than the entire Lehigh Valley (but excluding Allentown). The area selected encompasses thirteen towns and cities, including Bethlehem in Northampton County and five cities and towns in Bucks County, Pennsylvania, plus the southwest half of Warren County and the northwest portion of Hunterdon County, New Jersey (App. 678-679). The court treated as not significant the government's statistical showing of the localized nature of the existing banking business (App. 681), and the court's opinion made no mention of the growth of savings deposits in Phillipsburg and Easton banks while they were paying a lower rate of interest than other banks in the Lehigh Valley (see *supra*, p. 10). The court relied instead on evidence of population mobility tending toward general economic integration of the broader area (App. 679-680), and, apparently, on the court's expectation that the increased size of the merged banks would permit them to offer services in a somewhat wider area than at present (App. 688).

The court held that the government had failed to establish that the merger "would have any measurable anticompetitive effect" in this broad area (*ibid.*).

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[16] The advisory banking agencies treated Phillipsburg and environs as a relevant banking sector or submarket, and the government introduced evidence below showing banking localization and concentration in Phillipsburg. After the court made clear its rejection of Phillipsburg as a relevant market (see App. 25-26, 567-568), the government relied in its trial brief upon Phillipsburg-Easton. See Plaintiff's Trial Brief, pp. 10-18.

Moreover, the court stated that under applicable New Jersey law there were "many locations [in the New Jersey part of the court's geographic market] where either a new bank or a branch bank could be established" (App. 687).

The court then found that the potential ability of the merged bank to supply one sector of its geographic market—Phillipsburg—with commercial loans of more than 100,000 dollars and trust services (services excluded from the court's lines of commerce) clearly outweighed any conceivable anticompetitive effect (App. 689-690). As to less anticompetitive alternatives to merger which might achieve these benefits, the court found that "tentative" exploration of obtaining qualified officers to specialize in commercial lending and trust services was properly abandoned because of the cost of employing such personnel (App. 690) and that meeting local loan needs through participation with other banks had "disadvantages" (App. 697).

INTRODUCTION AND SUMMARY OF ARGUMENT

The fundamental question in this case is whether the antitrust standards defined by this Court in *United States* v. *Philadelphia National Bank*, 374 U.S. 321, and preserved in the Bank Merger Act of 1966,[17] apply to mergers of directly competing small commercial banks[18] in the nation's smaller commu-

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[17] See *United States* v. *Third National Bank in Nashville*, 390 U.S. 171, 181-182 (hereafter *"Nashville Bank"*); *United States* v. *First City National Bank*, 386 U.S. 361, 363-364 (hereafter *"Houston Bank"*).

[18] In 1968 there were 13,630 commercial banks in the United States, of which 11,798—86.6 percent—had deposits of less

nities. The difference between the competitive impact of horizontal mergers among the great city banks and the nation's small town banks is merely one of scale. Indeed, because there tend to be fewer financial institutions to provide alternatives in small communities for those in need of their services, the considerations set forth in the *Philadelphia Bank* opinion apply *a fortiori*—including the basis for defining the product and geographic markets and for evaluating the competitive consequences of reducing alternatives in already concentrated banking markets.

Commercial banks, with their unique clustering of financial products and services in one institution, are peculiarly significant to the economy of communities whose population is too small to support a large array of differentiated savings and credit businesses. In such communities, dependence on local bankers for financial services tends to be even greater than in the city. Convenience of access to a bank is as important. Small town residents and businessmen have the same interest in preserving the range of banking choices in their community as do urban borrowers and savers. For in the small town as well as the large, "if the businessman is denied credit because his banking alternatives have been eliminated by mergers, the whole edifice of an entrepreneurial system is threatened; if the costs of banking services and credit are allowed to become excessive by the absence of competitive pressures, virtually all costs,

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than $25 million. Federal Deposit Insurance Corporation, *Summary of All Accounts and Deposits in All Commercial Banks*, 4, 7 (1968).

in our credit economy, will be affected * * *" (*Philadelphia Bank*, 374 U.S. at 372).

We shall show, first, that the district court erred in rejecting the government's contention that here, as in the *Philadelphia Bank* case, commercial banking is a relevant product market in which to test the competitive effect of the merger. The merging banks have all the basic attributes of commercial banks outlined by this Court in *Philadelphia Bank*; hence their unique cluster of financial products and services "composes a distinct line of commerce" (374 U.S. at 356).

We shall then show that the court similarly erred in rejecting the government's contention that Phillipsburg-Easton is a relevant geographic market within which to assess the effects of this merger on competition. That this is an area in which the merger's effects will be direct and immediate is shown by the application here of a number of factors emphasized in this Court's *Philadelphia Bank* opinion—including the importance, especially to small customers who are principally served here, of convenient access in banking; the fact that banks in Phillipsburg-Easton generally compete for deposits within a radius of only a few miles (and have paid lower rates of interest to depositors than were being offered by nearby banks outside of Phillipsburg-Easton); and the fact that the vast bulk of the business of banks in Phillipsburg-Easton, including that of the merging banks, is localized within the area.

Finally, we shall show that there were several legal errors in the district court's evaluation of the

merger's effects on competition and determination of whether those anticompetitive effects are clearly outweighed by offsetting benefits to the convenience and needs of the community to be served. First, had the court considered the merger's effects in the relevant geographic and product markets identified by the government, it should have concluded that this merger, which will substantially increase concentration in an already highly concentrated market, may substantially lessen competition. Because of this error, the court balanced the convenience-and-needs factor against an erroneous assessment of competitive impact. Second, the court balanced competitive impact in a broad multi-community area against the convenience and needs of Phillipsburg considered in isolation, whereas the Act requires that both factors be assessed with reference to the same "community" or geographic market. Third, the court misapplied the convenience-and-needs standard by focusing only on the asserted needs of customers for large business loans and trust services and exaggerating the benefits that the merger would afford those customers. Fourth, the court and the merging banks failed adequately to consider alternative ways of achieving the merger's purported benefits—including reasonably available internal steps that either bank might have taken and the possibility of less anticompetitive mergers. For all of these reasons, the court failed to balance the factors with the kind of accurate, detailed consideration that the Act requires; and the case should, therefore, be remanded for further consideration under correct criteria.

ARGUMENT

I

Commercial Banking Is a Relevant Product Market

The term "commercial banking" covers the cluster of products and services offered by the only institutions permitted by law to accept demand deposits,[19] to create additional money and credit, to participate in and manage the nation's checking account system and to furnish short term business loans.[20] While commercial banks compete with certain other financial in-

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[19] Mutual savings banks in New Jersey are permitted to accept demand deposits, but there are no such institutions in Phillipsburg-Easton or in the Lehigh Valley (App. 175, 453).

[20] In *United States* v. *Philadelphia National Bank, supra,* 374 U.S. at 326-327 n. 5, this Court noted:

> The principal banking "products" are of course various types of credit, for example: unsecured personal and business loans, mortgage loans, loans secured by securities or accounts receivable, automobile installment and consumer goods installment loans, tuition financing, bank credit cards, revolving credit funds. Banking services include: acceptance of demand deposits from individuals, corporations, governmental agencies, and other banks; acceptance of time and savings deposits; estate and trust planning and trusteeship services; lock boxes and safety-deposit boxes; account reconciliation services; foreign department services (acceptance and letters of credit); correspondent services; investment advice. It should be noted that many other institutions are in the business of supplying credit, and so more or less in competition with commercial banks (see further, pp. 356-357, *infra*), for example: mutual savings banks, savings and loan associations, credit unions, personal-finance companies, sales-finance companies, private businessmen (through the furnishing of trade credit), factors, direct-lending government agencies, the Post Office, Small Busines Investment Corporations, life insurance companies.

stitutions in seeking deposits or in supplying credit, their demand deposit functions make them unique in the cluster of financial services they offer (App. 174-186).[21]

The merging banks here have all of the basic attributes of commercial banks outlined in *Philadelphia Bank, supra.* In a single institution they offer demand deposits; create credit; pay interest for the use of other people's money in time and savings deposits and lend it at greater interest; and offer short-term business loans and longer term real estate loans and even a modest trust service (see Statement, *supra*, pp. 11-12; see, also, App. 19, 52, 76, 182, 246).[22] This case is therefore governed by the holding in *Philadelphia Bank* (374 U.S. at 356-357) that:

> the cluster of products (various kinds of credit) and services (such as checking accounts and trust administration) denoted by the term "commercial banking," see note 5, *supra*, composes a distinct line of commerce. Some commercial bank-

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[21] Accordingly, competition with other financial institutions does not eliminate the need for competition between commercial banks themselves. See *Hearings on S. 1698 Before the Subcommittee on Domestic Finance of the House Committee on Banking and Currency*, 89th Cong., 1st Sess., at 378-379 (testimony of Federal Reserve Governor Mitchell).

[22] As is characteristic of banks of their size operating in small communities (*e.g.*, App. 95-96), their ratio of commercial loans to deposits is low, and a higher proportion of their loans is in residential and business real estate mortgages than is in short term commercial credit. This is typical of banks in the Lehigh Valley. See App. 83-84, 100, 133-134. See, generally, 55 Fed. Res. Bull. Charts A-20 and A-24.

> ing products or services are so distinctive that they are entirely free of effective competition from products or services of other financial institutions; the checking account is in this category. Others enjoy such cost advantages as to be insulated within a broad range from substitutes furnished by other institutions. For example, commercial banks compete with small-loan companies in the personal-loan market; but the small-loan companies' rates are invariably much higher than the banks', in part, it seems, because the companies' working capital consists in substantial part of bank loans. Finally, there are banking facilities which, although in terms of cost and price they are freely competitive with the facilities provided by other financial institutions, nevertheless enjoy a settled consumer preference, insulating them, to a marked degree, from competition; this seems to be the case with savings deposits. In sum, it is clear that commercial banking is a market "sufficiently inclusive to be meaningful in terms of trade realities." *Crown Zellerbach Corp.* v. *Federal Trade Comm'n*, 296 F. 2d 800, 811 (C.A. 9th Cir. 1961). [Footnotes omitted.]

The court below refused to follow this standard. In a ruling it characterized as "not orthodox" (App. 675), it purported to analyze the product market by "different groupings within the line of commerce separating those products and services where absence of competition may be significant from those in which competition from many sources is so widespread that no question of significant diminution of competition by the merger could be raised" (App. 675). As previously noted, however, the court did not make any findings as to the competitive significance of this

merger on the fragmented lines of commerce it selected.

The court's stated reason for refusing to follow *Philadelphia* was that the merging banks here have a considerably smaller proportion of demand deposits to total deposits, and of commercial and industrial loans to total loans, and a larger proportion of time and savings deposits to total deposits, than did the large city banks in *Philadelphia*. From this it concluded that competition from other types of institutions was necessarily greater than in large cities and that the defendant banks were engaged in only limited activity in fields unique to commercial banking (App. 672).

This approach disregards the fundamental teaching of *Philadelphia:* that it is the cluster of products and services which commercial banks offer, and not merely the ones that are unique to them, which as a matter of trade reality make commercial banking a distinct line of commerce. Commercial banks are to financial services what super-markets are to food retailing: a place where varied products and services—some unique and some not—are gathered together at a point of convenient access. In addition, the banks' credit-creating and demand-deposit functions, in whatever proportion, give them a distinctive role and influence on the economy of their community. Customers in small communities desire and utilize this cluster of services no less than city dwellers (see Statement, *supra*, p. 8).

If the district court's analysis were correct, all of the banks in Phillipsburg-Easton and most of those

elsewhere in the Lehigh Valley and in other small communities across the nation, which have similar ratios of business to those of the appellee banks (App. 764; see *supra*, pp. 7-8, 11-13), would be removed from the category of commercial banking for purposes of antitrust analysis and preserving competition. The result would be that residents of small communities would be denied the protection of the law enjoyed by city dwellers, and would have no assurance that competitive alternatives in commercial banking would be preserved for them.

The Bank Merger Act of 1966 did not change the definition of lines of commerce, or draw a distinction in this respect between city banks and banks in small communities. Its legislative history largely records a struggle over the criteria and procedures which should apply to institutions within the reach of the *Philadelphia* decision—*i.e.*, all commercial banks. The final enactment continued the antitrust standard for bank cases that had previously obtained (*Nashville Bank*, 390 U.S. at 182; *Houston Bank*, 386 U.S. at 363-364), and manifested "no intention to alter the traditional methods of defining relevant markets * * *" (*Nashville Bank*, 390 U.S. at 182, n. 15).

The court below recognized, with reference to the appellee banks, that " 'commercial banking' may be used to designate the general line of commerce embracing all bank services * * *" (App. 669). The evidence showed that the merging institutions were commercial banks (see *supra*, pp. 11-12), and the district court made no finding to the contrary. Since it also

made no findings with respect to the fragmented lines of commerce which it designated as appropriate product markets, and since it ultimately considered only commercial banks in measuring the merger's impact (App. 681-689), the court seemed tacitly to recognize the impracticality of analyzing bank mergers in the manner it proposed.[23] Although submarkets such as the court defined are sometimes appropriate for purposes of Section 7 analysis,[24] they may not be utilized to exclude from consideration a more general distinctive product or service market that is significant in terms of commercial realities. *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 326; *United States* v. *Continental Can Co.*, 378 U.S. 441, 457. Accordingly, commercial banking was a relevant line of commerce here.

II

Phillipsburg-Easton Is a Relevant Geographic Market

In the district court, the government contended that the anticompetitive effects of this merger should be

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[23] Several other district courts, as well as the Comptroller of the Currency, have also purported to analyze bank mergers with reference to numerous lines of commerce as proposed by the district court here. See, *e.g.*, *United States* v. *Crocker-Anglo National Bank*, 277 F. Supp. 133, 153-162 (N.D. Cal.); *United States* v. *Provident National Bank*, 280 F. Supp. 1, 7-9 (E.D. Pa.); *United States* v. *First National Bank of Jackson*, 301 F. Supp. 1161, 1179-1183 (S.D. Miss.); *United States* v. *First National Bank of Maryland*, 1970 CCH Trade Cases ¶ 73,061, at pp. 88,157-88,161 (D. Md. 1970).

[24] For example, some of the district court's individual lines of commerce would obviously be relevant in analyzing the effect on competition of a merger between a commercial bank and another type of financial institution.

judged either in Phillipsburg or in Phillipsburg-Easton, and that in either market the effect of the merger may be substantially to lessen competition. The district court held, however, that neither geographic area is an appropriate "section of the country" under Section 7; it ruled that "*the* appropriate geographic market" was a substantially broader area covering a major part of the Lehigh Valley (App. 678, emphasis added).

"[W]ithin [a] broad [product] market, well-defined submarkets may exist which, in themselves, constitute product markets for antitrust purposes" (*Brown Shoe Co.* v. *United States*, 370 U.S. 294, 325). The principle is equally applicable to geographic markets; there may be several areas in which it is appropriate to test the effect of a merger upon competition, and if the proscribed effect occurs in any one of them, the merger is illegal. See *United States* v. *Pabst Brewing Co.*, 384 U.S. 546, 552. For Section 7 bars mergers that may substantially lessen competition in "any" section of the country, and "The language of this section requires merely that the Government prove the merger may have a substantial anticompetitive effect somewhere in the United States" (*Pabst*, *supra*, at p. 549). Moreover, the size of the particular area where the merger has an impact is immaterial in determining whether that area is an appropriate market; Section 7 is designed to preserve and protect the benefits of competition in small communities as well as in vast metropolitan and larger regions. Cf. *Brown Shoe Co.* v. *United States*, 370 U.S. 294,

339; *United States* v. *Columbia Steel Co.*, 334 U.S. 495, 519.

In defining a relevant market under Section 7, "The proper question to be asked * * * is not where the parties to the merger do business or even where they compete, but where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate.[25] * * * This depends upon 'the geographic structure of supplier-customer relations.' * * * In banking, as in most service industries, convenience of location is essential to effective competition." *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 357-358.

In selecting the geographic market in this case, the district court failed to follow the foregoing settled principles, and as a result made three basic errors: (1) it improperly assumed that only a single market exists; (2) it ignored the evidence in the record that this merger would have a "direct and immediate" effect upon banking competition in Phillipsburg and Phillipsburg-Easton; and (3) rather than focusing on the area where the merger would have such an impact, it instead stressed the economic and social inte-

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[25] The anticompetitive effect with which Section 7 is concerned is the change in the structure of a market that a merger causes, rather than the particular anticompetitive practices, such as price changes, that follow such change. For Section 7 is designed to forestall such practices by preventing the changes in market structure that lead to them. See, *e.g.*, *Brown Shoe Co.* v. *United States*, 370 U.S. at 346; *Philadelphia Bank*, 374 U.S. at 365; *United States* v. *Von's Grocery Co.*, 384 U.S. 270, 277. Accordingly, the area of impact that defines an appropriate geographical market is an area where such structural changes occur.

gration among the population and other businesses in the larger merchandising area that it viewed as the only appropriate geographic market. Under the teachings of this Court, the record shows that Phillipsburg-Easton is a relevant market for testing the effect of this merger upon banking competition.

In *Philadelphia Bank*, this Court pointed out (374 U.S. at 358-360):

> Individuals and corporations typically confer the bulk of their patronage on banks in their local community; they find it impractical to conduct their banking business at a distance. See *Transamerica Corp.* v. *Board of Govs. of Fed. Res. Sys.*, 206 F. 2d 163, 169 (C.A. 3rd Cir. 1953). The factor of inconvenience localizes banking competition as effectively as high transportation costs in other industries. * * * Theoretically, we should be concerned with the possibility that bank offices on the perimeter of the area may be in effective competition with bank offices within; actually, this seems to be a factor of little significance.

In *Philadelphia*, this Court held that a four-county area was a relevant market for evaluating the competitive effect of the merger of the second and third largest of 42 banks in the Philadelphia metropolitan area. It emphasized a number of factors:

(1) the particular importance in banking of convenient access (374 U.S. at 358, 360-361, 369);

(2) the fact that banking offices generally compete for deposits within a radius of only a few miles (374 U.S. at 358 n. 35);

(3) the principle that a borrower's or investor's market varies directly with his size: "[T]he smaller the customer, the smaller is his banking market geographically" (374 U.S. at 359 n. 36);

(4) the fact that the vast bulk of the banks' business originated within the area (374 U.S. 359 n. 36), and that their business from outside the area was relatively slight (374 U.S. at 360 n. 37);

(5) the view of other federal banking agencies that the region was an area of effective competition (374 U.S. at 361); and

(6) the concentration of all the banks' offices within the area, as required by State law (374 U.S. at 361).

The Court also noted, in defining the product market, the importance of habit, custom, personal relationships and convenience as a factor tending to insulate banks from other competition—even when higher rates are offered for savings deposits (*e.g.*, App. 652-653). 374 U.S. at 357, n. 34.

With one exception,[26] these factors are equally applicable to the Phillipsburg-Easton area—although

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[26] When this suit was filed, New Jersey law did not limit the merging banks to operating in Phillipsburg, but permitted them to open branches anywhere within their home county (Warren County). While the case was pending, New Jersey law was amended to permit branching on a broader basis. See note 13, *supra*, p. 16. Since no one contended that either Warren County or the broader area in which the merging banks may now do business was an appropriate geographic market, this factor is not involved in this case.

naturally on a reduced scale—and they establish that that area constitutes an appropriate section of the country for testing the effect of this merger upon competition.

(1) Convenience of access is as important in this small community as it is in the larger markets (cf. App. 665).[27] Thus, although these cities are sufficiently small so that there is easy access to the center of either town where the banks have their main offices, the banks found it necessary to establish branches in surrounding townships within a radius of a few miles. They opened branches there because that is "where the customers are (App. 273)."

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[27] This is a general principle of the banking business. Compare *Philadelphia Bank*, at 358 n. 35. As the Federal Reserve Board noted in another proceeding, quoted in *Transamerica Corp.* v. *Board of Governors*, 206 F. 2d 163, 167-168 (C.A. 3), certiorari denied, 346 U.S. 901:

> Because of the frequency of need for access to one or more of the services of commercial banks, such banks draw their business largely from areas within which customers may conveniently visit the banks as occasion may require. Thus, in this aspect of their customer relations, commercial banks are largely local, and for the usually needed customer services a distant bank cannot adequately serve a customer. Very large concerns with national credit standing have access to credit from banks in many parts of the country and may also maintain accounts in widely scattered banks. This does not apply, however, to the great multitude of the customers of commercial banks. The smaller concerns, local business enterprises, and ordinary citizens must depend upon their local commercial bank or banks for the financial services peculiar to such banks; for all these customers there is no alternative or substitute, because distantly located banks do not serve or supply their needs.

(2) As the foregoing facts demonstrate, banking offices in Phillipsburg-Easton generally compete for deposits within a radius of only a few miles. Moreover, the merging banks do no significant advertising outside the area and banks from outside the area advertise within it only as part of incidental coverage utilized to reach other markets (see Statement, *supra*, p. 10).

(3) The customers principally served are relatively small: 74 percent of PNB's and 72 percent of SNB's number of total deposits are less than $1,000; and 96 percent and 97 percent, respectively, are less than $10,000 (App. 725-726, 733-734). Of total loans, 76 percent of PNB's and 58 percent of SNB's are less than $2,500, and 86 and 94 percent, respectively, are less than $10,000.[28]

(4) The vast bulk of the merging banks' business, and that of the other Phillipsburg-Easton banks as well, is localized within the area. For example, nearly every family in Phillipsburg deals with one of that community's three banks (App. 176). The merging banks' deposit and loan statistics show that they draw about 85 percent of their total banking business in every category from the Phillipsburg-Easton area. About 90 percent of each bank's total deposits, demand deposits, and time and savings deposits originate there; as well as 78 percent of PNB's total loans

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[28] Only 25 of PNB's 5,566 loans, and only 17 of SNB's 2,235 loans, exceed $50,000 (App. 733-734).

and 87 percent of SNB's.[29] Indeed, the business is so localized that the merging banks draw only about 10 percent of their deposits from Easton (App. 731-732). And, as the district court itself found in assessing the convenience and needs of the community to be served, Phillipsburg's businessmen prefer to deal with one of the three banks in that sector (App. 691, 693-697).

The small amount of business that the merging banks do outside the area results from special personal contacts or business relationships (App. 37-38, 40, 41-42, 80, 97, 269, 637). Similarly, banks from outside the area do relatively little business within it (App. 53-57, 64-68, 74, 96-98).

(5) The two other banking agencies required by the Bank Merger Act to comment on the competitive factors involved in this case also viewed Phillipsburg-Easton, or the Phillipsburg sector thereof, as the pri-

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[29] DEPOSIT AND LOAN ACCOUNTS OF PHILLIPSBURG NATIONAL AND SECOND NATIONAL LOCATED WITHIN PHILLIPSBURG-EASTON DECEMBER 30, 1967

(Percent of Total)

		Phillipsburg National		Second National	
		number	value	number	value
App. 725-726:	Total Deposits	91.6%	87.4%	92 %	88.8%
App. 727-728:	Demand Deposits	88.1	83.7	90.7	84.8
App. 729-730:	IPC Demand Deposits	88.2	83.8	90.8	88.7
App. 731-732:	Time and Savings Deposits	92.7	89.1	92.6	90.4
App. 733-734:	Total Loans	78.6	77.7	87.2	81.6
App. 735-736:	Comm. & Indust. Loans	79.5	86.9	90.9	76.0
App. 737-738:	Real Estate Loans	86.8	82.1	87.8	82.5
App. 817-818:	Installment Loans	77.2	67.9	88.0	86.2
App. 819-820:	Single Payt. Loans	73.4	58.5	74.6	69.7

mary area in which the merger's competitive impact would be felt (FDIC Rep., p. 2; FRB Rep., p. 4).

The extent to which the Phillipsburg-Easton banks were insulated from competition outside the area is dramatically illustrated by their practice with respect to interest rates on savings deposits. As of December 31, 1967, commercial banks elsewhere in the Pennsylvania and New Jersey sectors of the trial court's geographic market—many of them located only a few miles from Phillipsburg-Easton—were paying 4 percent interest on ordinary passbook savings accounts (some had been paying this rate since 1962). Commercial banks in Phillipsburg as of that date, and until at least July 1968, paid only 3½ percent on these accounts; Easton commercial banks paid 3 percent.[30] Yet Phillipsburg National's rate of deposit growth during 1962-1967 exceeded that of most Lehigh Valley banks known to be paying the higher rates of interest on such accounts during some or all of that period, and similar growth was experienced by Second National (see Statement, *supra*, pp. 10-11).

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[30] The president of Easton National Bank testified "3 percent was paid from October 1, 1959 until July 1, 1968. * * * We were authorized to go to a 4 percent level several years ago, and the regulations permitted us to, but we chose not to increase our rate" (App. 117). Phillipsburg National, however, had paid 3½ percent since early 1962. Almost all banks on the periphery of the Phillipsburg-Easton area were paying 4 percent during that period. Phillipsburg National's president explained that the half-percent differential enabled them to keep most small accounts because for them it "doesn't mean this much" (App. 635). Phillipsburg and Easton banks, however, almost simultaneously followed Lafayette Trust's lead when that Easton bank increased its rate to 4 percent (App. 118).

Despite the demonstrated localization of banking in this area, it is of course possible for customers from Phillipsburg-Easton to go elsewhere if they can afford the time and tolerate the inconvenience, and if an institution primarily serving another community is interested in dealing with them. Cf. *United States* v. *Provident National Bank*, 280 F. Supp. 1, 14-15 (E.D. Pa.) The broader market used by the district court in effect implies that Phillipsburg-Easton residents can protect themselves against the adverse competitive consequences of this merger by thus banking elsewhere. But as the Court noted in *Philadelphia*, this is largely a question of their size. "Small businessmen especially are, as a practical matter, confined to their locality for the satisfaction of their credit needs * * *. If the number of banks in the locality is reduced, the vigor of competition for filling the marginal small business borrower's needs is likely to diminish" (*Philadelphia Bank* at 369). Moreover, small depositors have little reason to leave their money for safe keeping or checking purposes in communities they visit only on occasional shopping trips (Tr. 295). Whatever may be the social and economic integration of the larger region, it does not create the kind of credit relationship, based on intimate local knowledge, that opens the doors of banks to small businessmen, householders and those whose primary security is their character (App. 58, 280-281). Nor does it evidence the kind of convenience that encourages the residents of an area to use a bank's deposit and other services.

The possibility that the resulting bank might compete more vigorously in the future with banks serving peripheral areas, as a ground for using the broader area relied on by the district court (*compare* App. 29-30, 33-34, 125-126, *with* App. 688), does not controvert the government's proof that in Phillipsburg and Easton the immediate effect of the proposed merger would be elimination of competition between two substantial firms and a significant increase in an already high degree of concentration.[31] "[W]hile there is undoubtedly some commercial intercourse between smaller communities within a single 'standard metropolitan area,' the most intense and important competition * * * will be confined to * * * the particular communities in such an area and their immediate environs." *Brown Shoe* at 339. As *Philadelphia Bank* makes clear, any area where a merger has such an impact is an appropriate section of the country. "Proof of the section of the country where the anticompetitive effect exists is entirely subsidiary to the crucial question in * * * every § 7 case which is whether a merger may substantially lessen competition anywhere in the United States" (*Pabst*, *supra*, 384 U.S. at 549-550)

If the banking interests of residents and businesses in small communities are to be protected, the localized

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[31] Moreover, the district court's stated reason for not according significance to the government's proof that most of the merging banks' business is local—that "These percentages have significance only to the extent that they are considered in conjunction with concentration of population" (App. 681)—hardly justified the court's extension of the market to include Bethlehem, a city with a larger population than that of either Phillipsburg or Easton.

nature of banking must be given primary weight in defining banking markets, for it defines the principal area of impact. Otherwise, an effective exemption from the statute will have been created for horizontal mergers of small banks in small communities, thereby reducing for the people of those areas the choice among banking alternatives that Section 7 preserves in the more densely populated areas. This was not the intention of Congress when it adopted the original Section 7, extended it in the Celler-Kefauver Antimerger Act, and reaffirmed this Court's application of it to commercial banking in the Bank Merger Act of 1966.

III

The District Court's Evaluation of the Merger's Effects on Competition and on Community Convenience and Needs Was Defective Because It Applied Erroneous Standards

Under the Bank Merger Act of 1966, the determination of the legality of a bank merger involves a two-step process. *First*, the effect of the merger upon competition must be evaluated, *i.e.*, whether, in the relevant product and geographic markets, it may substantially lessen competition. That determination is made by applying the usual standards under Section 7 of the Clayton Act. *United States* v. *Third National Bank in Nashville*, 390 U.S. 171, 181-183. *Second*, if the merger violates those standards, then the district court may approve it only if it finds that "the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in

meeting the convenience and needs of the community to be served." See *Nashville Bank*, *supra*, at 183-184; *United States* v. *First City National Bank of Houston*, 386 U.S. 361, 369-370.

If the district court erroneously evaluates the effect of the merger on competition—whether by using the wrong markets or by applying improper criteria for determining such effect—that error also invalidates its conclusion that such effect is clearly outweighed by the community convenience and needs. *Nashville Bank*, *supra*, at 183. Similarly, any error in applying the convenience-and-needs standard necessarily also undermines the balancing of the two factors involved. "To weigh adequately one of these factors against the other requires a proper conclusion as to each" (*ibid.*).

In the present case, the district court erred both in evaluating the effect of the merger on competition and in balancing that effect against the meeting of community convenience and needs. The court's threshold error, as we have just shown, was using the wrong geographic market for testing competitive impact. As we shall show, under this Court's Section 7 decisions, the effect of the merger in Phillipsburg-Easton may be substantially to lessen competition.

The district court's evaluation of whether the offsetting convenience-and-needs factor clearly outweighs the merger's anticompetitive effects was defective for a number of reasons: (1) the court weighed this factor against an erroneous assessment of competitive impact; (2) it failed to balance the factors with the kind of detailed consideration that this Court's

Nashville Bank decision requires; (3) it determined competitive effect and community convenience and needs in different geographic markets rather than, as the Act requires, in the same market; and (4) it failed adequately to consider whether the community benefits could have been achieved by a less anti-competitive method than this merger.

A. *The Effect of the Merger in Phillipsburg-Easton May Be Substantially to Lessen Competition.*

Under the criteria developed by this Court, particularly in *Philadelphia Bank*, 374 U.S. at 364-366, for determining the effect upon competition in concentrated markets of so-called horizontal mergers (those between competitors), the effect of this merger may be substantially to lessen competition. The determinative inquiry is the effect of the merger on concentration as reflected in the market shares of the merging banks and of the remaining banks serving the community.

In Phillipsburg-Easton, the commercial banking market is highly concentrated (see Statement, *supra*, pp. 13-15). The merger would significantly increase this concentration. The total deposit shares of the two largest banks would increase from 56 to 65 percent and the merged bank would control 20.2 percent of total deposits and 27.3 percent of total loans and discounts. Its share of overall business would be at least 24 percent (see Statement, *supra*, pp. 13-15). In such a concentrated market, these market shares show that the effect of the merger may be substantially to lessen competition. *Philadelphia Bank* (30

percent combined); *Nashville Bank* (33.6 percent and 4.8 percent); *United States* v. *Von's Grocery Co.*, 384 U.S. 270 (7.5 percent combined); *United States* v. *Pabst Brewing Co.*, 384 U.S. 546 (4.9 percent combined); *United States* v. *Provident National Bank*, 280 F. Supp. 1 (E.D. Pa.) (10 percent combined).

This Court has noted the particular importance of preserving competitive alternatives in banking markets which are already concentrated, since they provide the opportunity for competitive deviations from the oligopolistic pattern. *Philadelphia Bank*, 374 U.S. at 365 n. 42. "[E]ven the mere addition of one seller to an oligopoly market makes the market more complex and less predictable. Therefore there may be competitive actions and reactions in an oligopoly market." *Northern Natural Gas Co.* v. *Federal Power Commission*, 399 F.2d 953, 965-966 (C.A.D.C.). In banking these competitive reactions may manifest themselves in deviations from generally prevailing loan and deposit interest rates (*e.g.*, App. 188, 457-458, 463) and in improved services such as more convenient banking hours (*e.g.*, App. 34) or more conveniently located branches (*e.g.*, App. 273, 398-399).[32]

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[32] For these reasons the district court's view that the government failed to prove its case because it did not show that the merger would result in immediate adverse consequences in daily transactions (App. 688) misconceived the significance of the structural approach to horizontal mergers set forth in *Philadelphia Bank*, 374 U.S. at 366. The extensive evidence offered by the defendants to the effect that bank mergers have no immediate adverse competitive effects is similarly irrelevant. *Id.* at 367, n. 43. See n. 25, p. 32.

B. *The District Court Misconceived and Misapplied the Community Convenience-and-Needs Standards*

As noted, the district court's improper assessment of the competitive impact of the merger vitiated its weighing of that impact against the benefits to the community. *Nashville Bank, supra,* 390 U.S. at 183-184. Moreover, it conclusory statement (App. 699) that "any conceivable anticompetitive effect of the merger is clearly outweighted by * * * the needs and convenience of the community to be served" does not reflect the kind of carefully articulated and reasoned analysis that the Act requires before the court may find that the anticompetitive consequences are "clearly outweighed" by the community benefits. *Nashville Bank* at 187-192.

There were also several serious fundamental defects in the district court's understanding and application of the community convenience-and-needs standards.

1. *Community Convenience and Need Should be Evaluated in the Same Geographical Area as Competitive Effect.* By assessing competitive impact in a broad multi-community market, the court was able to conclude that the anticompetitive effect would be insubstantial; turning to the needs of the community, however, it assessed the present availability of the two needs it focused on—large loans and trust services—only in the Phillipsburg sector of the community.

This approach seriously misapprehends the relation between Section 7 and the Bank Merger Act. The latter statute, whose history has twice been re-

viewed by this Court (in the *Houston Bank* and *Nashville Bank* cases), was a compromise produced in an intense legislative struggle. It had three principal substantive effects: (1) establishment of a uniform standard for the assessment of commercial bank mergers by courts and banking agencies; (2) continuation of traditional antitrust standards for testing the anticompetitive effects of such mergers; and (3) creation of a new affirmative defense to proved violations of the antitrust standards—convenience and needs of the community to be served.[33]

Since the defense depends upon a balancing of anticompetitive effects against the community's needs, both factors must be assessed with reference to the same geographic area if the comparison is to be meaningful. The reason that a particular area is an appropriate geographic market is because it is an area where the merger will have a direct and serious impact upon competition, *i.e.*, it will eliminate one of the reasonably available choices for customers in the area. Any offsetting benefits that may justify the merger must be evaluated on the basis of their effect in the same area. For such benefits relate to the serving of the same banking needs which underlie the selection of the geographic market for determining competitive impact. Congress manifestly intended the convenience-and-needs defense to legalize only those anticompetitive bank mergers whose direct benefits to the people to be served clearly out-

[33] Under the law as it stood prior to the 1966 Act, such a defense was not available. *Philadelphia Bank*, 374 U.S. at 371.

weigh the injury those same people would suffer through the elimination of a significant entity that regularly had been serving them. In terms of the statutory language, the "community to be served," whose convenience and needs are to be evaluated, is the same as the "section of the country" in which the competitive impact of the merger is to be tested. See 112 Cong. Rec. 2445, 2457 (remarks of Rep. Reuss).

In determining the needs of the community when thus properly defined, it is, of course, appropriate to focus on a particular sector if the benefit to that sector will accrue to the entire community. An example might be a merger which would confer otherwise unachievable benefits upon a blighted area of a city. Although the larger urban area would constitute the relevant market, benefit to the smaller area within it might be found, in such a case, to serve the convenience and needs of the city at large.

The district court made no such findings here, however. It never viewed Phillipsburg-Easton as a community in which to measure competition or needs. Although it measured competition in a large multi-community area, it treated Phillipsburg alone (where the anticompetitive effect of the merger would be the most drastic) as the "community" whose banking needs were to be considered—and it assessed those needs with reference only to banking services located in Phillipsburg, while ignoring those available in its twin city across the river.

2. *The district court misapplied the convenience-and-need standard.* In assessing the needs of the Phillipsburg community, the district court considered too narrow a segment of that community. It looked

to the needs of only two groups there—customers for large business loans or for trust services. The needs of the smaller depositors and the smaller borrowers, whose number is far greater, whose banking range is far narrower, and whose local banking alternatives the merger would reduce, were ignored.

The primary need emphasized by the court, as reflected in extensive quotations from testimony (App. 691-698), was the desire of some Phillipsburg businessmen for an opportunity to borrow larger sums from a bank located in Phillipsburg than any of the three banks presently located there can directly supply. But the record shows that in Easton four banks have lending limits equal to or substantially in excess of that of the proposed resulting bank (see n. 14, *supra*, p. 17). Moreover, the larger borrowers, who tend to be established businessmen, have greater access than smaller borrowers to banks elsewhere in the region (see Statement, *supra*, pp. 7, 17-18). In other words, the broad multi-community area used by the court to measure the merger's competitive effect would seem more relevant to assessing this asserted need of the Phillipsburg community than to the purpose for which it was used.

The other need emphasized by the court related to improved trust services. Demand for this service, however, is relatively slight compared with demand for other banking services, and much of the area's need for personal and corporate trust services is satisfied by large banks in cities as distant as Philadelphia and New York, because users of such services are willing to shop further afield (App. 75, 90, 95,

165, 358, 439, 462, 491). Moreover, trust services are available from most of the local banks (App. 838). Both of the merging banks have small trust departments (App. 165, 245, 631-633, 710), and ample trust services are available in Easton from the Easton National Bank, which handles more than $45 million in both personal and corporate trusts (App. 119), and from the Lafayette Trust Bank (App. 388). In addition, Nazareth National Bank, which has a branch in Easton's suburb of Forks, handles some $20 million in trust assets (App. 77). There appears to be no serious demand for trust services in Phillipsburg which cannot be met without difficulty (App. 50, 627).

The district court also found that the larger bank resulting from the merger would benefit the community because it could afford the salaries of a full time specialist in commercial loans and a trust officer (App. 689-690). But it is doubtful that the combined institution would have sufficient business to warrant this step in the near future. An officer from a large Bethlehem bank testified that a full time trust officer becomes justifiable only after trust business approaches $30 million, which may take nearly a decade (App. 111-113). Similarly, a substantially greater volume of commercial loans than either bank presently has would be necessary to support a full time specialist in this field (App. 279).

Small banks typically do not have personnel devoting full time to any one phase of their varied operations (App. 92, 281-282, 384, 396-397, 478-479, 540). Their officials become experienced in several fields, and are usually able to specialize in any one of

them if the need arises. PNB's vice-president conceded that he could handle all commercial lending if he devoted full time to it (App. 268-269; Tr. 869-870), and its consumer loan specialist greatly expanded that department until he was told to concentrate on mortgage loans (App. 267-268, 413-414). Thus the bank's present officials have the potential for necessary specialization, if their business warrants it (see App. 638-639). As a PNB officer recognized (App. 266-267), however, the merger was not expected to produce a significant change in the character of the resulting bank's business (App. 281-282). While the merger might increase its ability to handle business from outside the community, this is an extremely attenuated benefit to the convenience and needs of the people in Phillipsburg-Easton (cf. App. 143-144, 528-529).

We submit that a far more compelling showing of need would be necessary to outweigh clearly the merger's anticompetitive effect in increasing banking concentration in Phillipsburg-Easton—and this showing would have to be all the greater if the Phillipsburg sector alone were to be considered the relevant area. An increase in lending limits when there are other available local sources for larger loans, or the provision of better trust services in a small community where there are several banks with established trust departments, is not enough "clearly" to outweigh the anticompetitive impact of this merger. Undoubtedly the merger would serve the convenience of larger business borrowers, and those who wish to establish trusts. But the fact that the merged bank might be a larger institution which would render

better banking services is not in itself sufficient to establish a defense under the Bank Merger Act. Under that statute a merger cannot be approved unless the gains in better service to the entire community clearly outweigh the anticompetitive detriment to it and the merger is "essential to secure this net gain * * *". *Nashville Bank*, 390 U.S. at 188-189.

3. *The Merging Banks—and the District Court—Failed Adequately to Consider Less Anticompetitive Alternatives to This Merger.* In determining whether benefits to the community outweigh the anticompetitive effects of a merger, the merging banks must demonstrate that any overall gain to the public interest cannot be achieved except by merger. For "[i]f the injury to the public interest flowing from the loss of competition could be avoided and the convenience and needs of the community benefited in ways short of merger but within the competence of reasonably able businessmen, * * * we seriously doubt that Congress intended a merger to be authorized by either the banking agencies or the courts. * * * Otherwise, the benefits of competition, acknowledged by Congress, would be sacrificed needlessly." *Nashville Bank*, 390 U.S. at 189. In the present case, even assuming *arguendo* that the district court properly determined convenience and needs by reference only to Phillipsburg, its ultimate holding on this issue is invalid under the foregoing principle because of its failure adequately to consider less anticompetitive methods of achieving the same benefits.

(a) *Alternatives to Merger Were Not Seriously Pursued.*

Both of the merging banks were growing and profitable. They had increased their assets, deposits and loans dramatically in the preceding decade, had financed substantial improvements and new banking offices internally, and had continued to pay substantial cash dividends (App. 282, 285, 644; Tr. 996; GX-14). Any problems they had resulted largely from their own commercial success within their community.

The district court stressed the lack of full time specialists in their trust and commercial loan departments. It found that there was only "tentative exploration of the possibility of obtaining qualified bank officers," and that this tentative effort "ceased when it became clear that the expense was out of reach" (App. 690). The only evidence of such tentative exploration, however, was a discussion by SNB with an officer of one of the nation's largest banks, Chemical Bank of New York, after the merger had been announced. He indicated that SNB could not meet his terms (App. 406-408). The banks apparently did not investigate whether there were available qualified bank officers from other parts of the country whose compensation requirements might be lower. Except for an occasional casual review of unsolicited placement listings, no effort was made, so far as the record shows, to use the various services specializing in the recruitment of bank specialists and executives. Yet a PNB officer stated that, because of increased business, even if the merger were disapproved the bank would "have to hire somebody * * * [w]hether he was a specialist or not" (App. 284; *compare* App. 285 *with* App. 540-541).

Officers of both banks admitted that one reason for the lack of serious effort to hire new management personnel, during at least the 18 months prior to the merger, was that the merger discussions were under way (App. 644-645, 649, 654, 657-658). These discussions had begun several years before the merger plan was consummated (*e.g.*, App. 630, 644-645), and they directly affected the way the banks were operated. For example, they did not retain cash to pay salaries which might attract full time specialists, although the cash dividends alone were substantial during this period.[34]

Nor did the banks explore methods of increasing their lending limits. They did not seek to enlarge their capital structure by offering new capital stock because, as a spokesman for the banks testified, "if both banks should attempt to sell [new stock] they would only be fighting for the dollar themselves, one against the other which would not do anybody any good" (App. 156). No effort was made to retain cash dividends to enlarge surplus accounts for the purpose of increasing lending limits (App. 714-715; Tr. 996).[35]

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[34] PNB paid cash dividends of $33,000 in 1967 and total dividends from 1962 to 1967 of $192,000; SNB paid cash dividends of $36,250 in 1967 and total dividends between 1962 and 1967 of $198,750 (GX-14; App. 285).

[35] Moreover, lending limits are not an absolute barrier. Where credit risks are sound, requests for loans exceeding the limits may be accommodated through participation with other commercial banks in or outside the area. For example, PNB financed the construction of the local parochial high school by participating in loans in excess of its limit (App. 271-272. See App. 319, 324). It has also accommodated large borrowers by making multiple loans; in 1967 it extended a total credit of $1.6 million to a single businessman (App. 621).

The record further indicates that practical alternatives to merger were available for achieving the benefits the banks contended the merger would produce. A small bank in Easton, Lafayette Trust Company, demonstrated this by hiring new management, issuing stock and taking other steps to enlarge its loan limits and modernize its operations.[36] Internal development by the defendant banks of the allegedly needed services, therefore, was reasonably feasible (cf. *Nashville Bank*, 390 U.S. at 190-192),[37] though perhaps less attractive to the defendants than merger.

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[36] In May 1965—shortly before the defendant banks became involved in their merger plans—Lafayette Trust, then with "approximately 18 million" dollars in deposits (App. 396), hired a new vice president for $11,000 salary with "nothing" in fringe benefits (App. 395). Then, using the methods outlined in the text, Lafayette Trust was able to add two additional branches and a full time mortgage specialist, to build deposits to 24.3 million dollars in December 1966 and to nearly 30 million dollars by September 1968, and to increase its lending limit. Although Lafayette Trust had no full time commercial lending officer, it moved aggressively into that field; it solicited new deposits by boosting passbook interest rates—forcing other Phillipsburg-Easton banks, after some delay, to do the same (App. 118)—and in February 1968 it began computerizing (App. 398). As a result Lafayette Trust, which has only $4 million more in assets than PNB, has a loan limit ($224,365) (see *supra*, n. 14, p. 17) which is more than twice as great (App. 401), because it took steps to increase its capital accounts (App. 403-404).

[37] The merging banks have the financial strength for efforts similar to those of Lafayette Trust (see *supra*, n. 36). Both banks showed substantial growth and considerable profits during the decade preceding the merger (see *supra*, pp. 11, 53, n. 34) and they were able to finance internally the modernization of the offices, the opening of branches and the purchase of au-

(b) *The Possibility of Less Anticompetitive Mergers Was Ignored.*

The trial court failed to weigh, as the government urged (App. 588-589, 593), the possibility of achieving the same community benefits through a less anticompetitive merger. In *Nashville* this Court ruled "that before a merger injurious to the public interest is approved, a showing [must] be made that the gain expected from the merger cannot reasonably be expected through other means" (390 U.S. at 190). The Court held, accordingly, that the owners of the Nashville bank should have made a serious effort to sell to someone, other than their leading competitor, who might have been willing to remedy the bank's difficulties (390 U.S. at 191-192). By the same reasoning, the possibility of a less anticompetitive merger is an alternative which must be explored to satisfy the convenience and needs test. Yet the district court's opinion reveals no consideration of this alternative.

At the time of the merger, PNB and SNB were two of nine banks in Warren County. Under the existing State law, either could have merged with any of the six Warren County banks outside of Phillipsburg, without the severe loss of direct competition

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tomated equipment at substantial costs without reducing their cash dividend. For example, in 1957 PNB modernized its main office and added a parking lot at a cost of $120,000. In 1964 it opened its Hillcrest Branch at a cost of $116,500 and its Alpha Branch at a cost of $130,000. Since 1958 it has purchased $48,000 worth of semi-automated bookkeeping equipment. (GX-14, App. 627, 641-643.)

that is involved here.[38] But neither PNB nor SNB gave "any consideration to contacting any other banks in Warren County with respect to the prospects of merging with one of those banks * * *" (App. 327, 662-663). Two of these Warren County banks, located in the town of Washington, some 12 miles from Phillipsburg, were approximately the same size as the two Phillipsburg banks.[39] Thus, the asserted "con-

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[38] The available number of less anticompetitive alternatives has been greatly increased by the amendments to the New Jersey Branch Banking Law (see, *supra*, p. 16, n. 13). Now either defendant could merge with any of the 86 other banks located throughout the newly created First Banking District, covering all of northern New Jersey (App. 868-870). A merger with such a bank located in some other northern New Jersey community would not involve a loss of existing competition in Phillipsburg-Easton. We believe that it would be appropriate for the district court to consider, on remand, the wider range of alternatives now available.

[39] The First National Bank of Washington had deposits of $18.2 million and the Washington Trust Co. had deposits of $14.5 million, as compared with $22.3 million and $16.0 million for PNB and SNB (App. 684).

Subsequently, the First National Bank of Washington merged with Hackettstown National Bank (deposits of $10 million), to form Warren County National Bank. This merger of two small banks thirteen miles apart was approved by the appropriate federal banking agencies. As pointed out by defendants (Joint Motion to Strike, Affirm and Advance at 17), Warren County National thereafter became an affiliate of First National State Bancorp, a Newark-based holding company.

The possibility that larger Newark-based banks may now enter Warren County by means of such "foothold" acquisitions does not, as appellees suggested in their motion to affirm, justify the merger of PNB and SNB to foreclose this threat of additional local competition. Such a merger might be justified only where small competitors had to combine to save themselves from destruction by large firms. *United States* v. *Von's Grocery Co.*, 384 U. S. 270, 277.

venience-and-needs" benefits based on increased size and lending limit might well have been available through merger with either of these banks.

Small banks can compete successfully in small markets and indeed can compete successfully with large banks if they have the will to do so. *Nashville Bank*, 390 U.S. at 191, n. 24.[40] As a class they face similar problems—difficulty in hiring full time specialists, lending limitations, and restriction of business opportunities because of the small size of the community they serve. If the common problems of small banks in small communities were to be a justification for merger in the absence of significant efforts to alleviate them by other means, multiple banking alternatives would be likely to disappear in many of the small towns of America. But Section 7 of the Clayton Act and the Bank Merger Act were intended to preserve a diversity of banking opportunity for all Americans—in small communities as well as large.

[40] See Kohn, *The Future of Small Banks: An Analysis of Their Ability to Compete with Large Banks* (N.Y. State Banking Dept. 1966), p. 18.

CONCLUSION

The judgment of the district court should be reversed and the case remanded for further consideration under correct criteria.

Repectfully submitted.

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APRIL 1970.

APPENDIX

Section 7 of the Clayton Act, 38 Stat. 731, as amended, 64 Stat. 1125, 15 U.S.C. 18, provides in pertinent part:

> That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

Section 18(c) of the Bank Merger Act of 1966, 80 Stat. 7, 12 U.S.C. (Supp. II) 1828(c), provides:

> "(c)(1) Except with the prior written approval of the responsible agency, which shall in every case referred to in this paragraph be the Corporation, no insured bank shall—
>
> "(A) merge or consolidate with any noninsured bank or institution;
>
> "(B) assume liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution;
>
> "(C) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in such insured bank.
>
> "(2) No insured bank shall merge or consolidate with any other insured bank or, either di-

rectly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured bank except with the prior written approval of the responsible agency, which shall be—

"(A) the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a District bank;

"(B) the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank (except a District bank);

"(C) the Corporation if the acquiring, assuming, or resulting bank is to be a nonmember insured bank (except a District bank).

"(3) Notice of any proposed transaction for which approval is required under paragraph (1) or (2) (referred to hereafter in this subsection as a 'merger transaction') shall, unless the responsible agency finds that it must act immediately in order to prevent the probable failure of one of the banks involved, be published—

"(A) prior to the granting of approval of such transaction,

"(B) in a form approved by the responsible agency.

"(C) at appropriate intervals during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection, and

"(D) in a newspaper of general circulation in the community or communities where the main offices of the banks involved are located, or, if there is no such news-

paper in any such community, then in the newspaper of general circulation published nearest thereto.

(4) In the interests of uniform standards, before acting on any application for approval of a merger transaction, the responsible agency, unless it finds that it must act immediately in order to prevent the probable failure of one of the banks involved, shall request reports on the competitive factors involved from the Attorney General and the other two banking agencies referred to in this subsection. The reports shall be furnished within thirty calendar days of the date on which they are requested, or within ten calendar days of such date if the requesting agency advises the Attorney General and the other two banking agencies that an emergency exists requiring expeditious action.

"(5) The responsible agency shall not approve—

"(A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

"(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the trans-

action in meeting the convenience and needs of the community to be served.

In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

"(6) The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the agency has found that it must act immediately to prevent the probable failure of one of the banks involved and reports on the competitive factors have been dispensed with, the transaction may be consummated immediately upon approval by the agency. If the agency has advised the Attorney General and the other two banking agencies of the existence of an emergency requiring expeditious action and has requested reports on the competitive factors within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the agency.

"(7)(A) Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consummated. The commencement of such an action shall stay the effectiveness of the agency's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented.

"(B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).

"(C) Upon the consummation of a merger transaction in compliance with this subsection and after the termination of any antitrust litigation commenced within the period prescribed in this paragraph, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this subsection shall exempt any bank resulting from a merger transaction from complying with the antitrust laws after the consummation of such transaction.

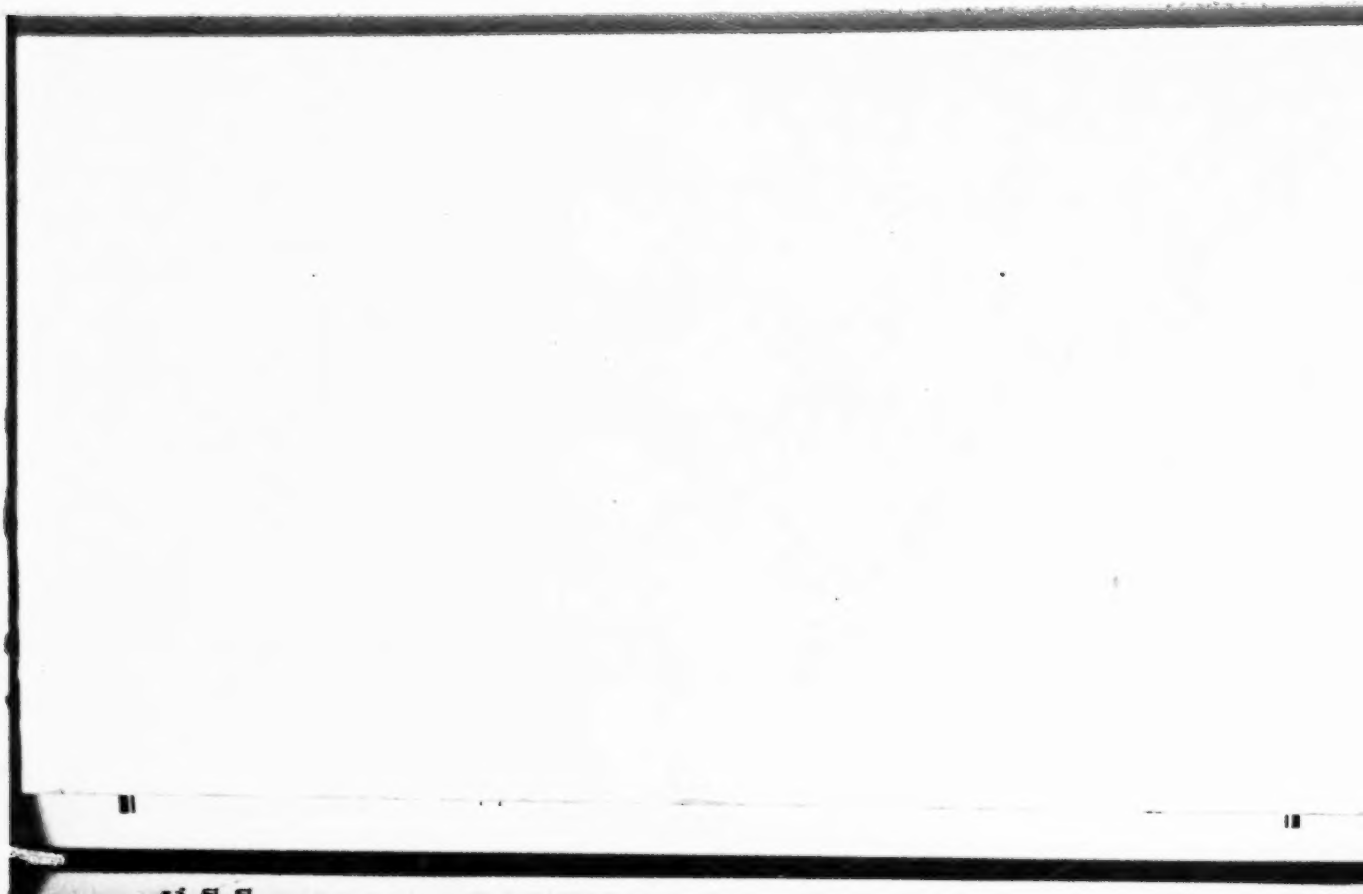
"(D) In any action brought under the antitrust laws arising out of a merger transaction approved by a Federal supervisory agency pursuant to this subsection, such agency, and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.

"(8) For the purposes of this subsection, the term 'antitrust laws' means the Act of July 2,

1890 (the Sherman Antitrust Act, 15 U.S.C. 1-7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12-27), and any other Acts in pari materia."

* * * *

☆ U. S. GOVERNMENT PRINTING OFFICE: 1970



FILED
APR 10 1970
JOHN F. DAVIS, CLERK

No. 1093

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

UNITED STATES OF AMERICA, *Appellant*

v.

PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY, SECOND NATIONAL BANK OF PHILLIPSBURG, and WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

BRIEF OF APPELLEE, WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1093

UNITED STATES OF AMERICA, *Appellant*

v.

PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY, SECOND NATIONAL BANK OF PHILLIPSBURG, and WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

BRIEF OF APPELLEE, WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, INTERVENOR

QUESTIONS PRESENTED BY APPELLANT

1. Whether the district court erroneously rejected commercial banking as a relevant product or service market in which to test the competitive effect of bank mergers in small communities.

2. Whether, in an antitrust action challenging a proposed merger of banks located in a community in which

the banking business is predominantly local, the court may properly refuse to consider the merger's probable effect on competition in that community because, on the basis of evidence of general social and economic integration, it deems the relevant geographic market to be a broad multi-community area.

3. Whether, in such an action, the court's consideration of the "convenience and needs of the community to be served" is legally insufficient if the "community" whose "needs" are considered is narrower than the relevant geographic market in which the anticompetitive effects of the merger are measured.

4. Whether, in any event, the court below erred in its determination of the convenience and needs issue by failing adequately to consider whether the same benefits could be achieved by less anticompetitive means.

STATEMENT

The Proceedings

On April 14 and 17, 1967 Phillipsburg National Bank and Trust Company (hereinafter referred to as Phillipsburg National) and the Second National Bank of Phillipsburg (hereinafter referred to as Second National) approved by their respective Boards of Directors an agreement to merge Second National with and into Phillipsburg National.

The Comptroller of the Currency, being the responsible regulatory agency since the resulting bank was to be a national bank,[1] filed a decision approving the merger on December 18, 1967. Said opinion was rendered after consideration of the application of Phillips-

[1] 12 U.S.C. 1828(c).

burg National and Second National; a complete investigation by the Comptroller's office, including a full field investigation and, consideration of the requested reports on the competitive factors submitted by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Department of Justice (Antitrust Division).[2] Also, a Hearing was held on August 14, 1967 by the Comptroller of the Currency.

The present action was filed by the Department of Justice on January 16, 1968, alleging the proposed merger violated Section 7 of the Clayton Act, and seeking an injunction under said Act.

As a matter of right set forth in the Bank Merger Act of 1966[3] (hereinafter referred to as BMA-66) the Comptroller of the Currency intervened in the action on February 21, 1968.

Answers were filed by defendant banks and intervenor. Pre-trial briefs were filed by all parties on April 19, 1968. Trial commenced on September 11, 1968 and concluded on September 26, 1968.

The District Court's opinion was handed down on October 14, 1969.[4] On said date, after the opinion was rendered, an argument on lifting the automatic stay was heard by the district court. During the course of

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[2] These agencies are required by law (12 U.S.C. § 1828(c) to report on the competitive factors, and so do not consider the convenience and needs of the community to be served, or the financial and managerial resources and the future prospects of the banks involved.

[3] 12 U.S.C. § 1828(c), as amended by the Bank Merger Act of 1966, Public Law 89-356, 64 Stat. 892.

[4] Reported in 306 F. Supp. 645.

the argument which was continued to and concluded on October 20, 1969 the Court opened the record to receive additional evidence from the Intervenor relating to the changed conditions in New Jersey which took place subsequent to the trial, as a result of changes in the New Jersey banking laws. Evidence was also received from the Department of Justice. After receiving the supplementary evidence the Court stated[5] that in light of the evidence adduced, the supplementary evidence . . . "tends to corroborate my findings of fact that the amended New Jersey statute now creates greater ease of entry into the market."

THE FACTS

Background

This case involves the merger of Phillipsburg National, ranking twelfth out of 41 in the defendant banks' market area and Second National ranking nineteenth out of 41 in the defendant banks' market area whose merged assets total only $41,000,000 and who together hold only 3.5 percent of the relevant geographic market, ranking seventh of 40. (A. 502; DX-12, A 802, R. 776). Measured by trust assets, Phillipsburg National ranks 1346th and Second National 2429th out of approximately 3100 banks in the nation with trust powers. (IX-5, A. 839-40, R. 1438).[6] Combined they will have $38,362, 828 in total deposits. (IX-3, A. 837 R. 1438). These two commercial banks are in absolute terms small banks. (R. 1476).

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[5] See pp. 28-29 of the Transcript dated October 20, 1969.

[6] Intervenor's exhibits during trial were marked GI, meaning Government Intervenor, however, to be consistent with appellant's brief they will be referred to in this brief as IX, meaning Intervenor's exhibit.

The ten contested Clayton Act § 7, bank merger cases prior to the instant case, ranged in size from the Manufacturers Hanover case with over $6 billion in assets and 14.47 percent of the market to the First National Bank of Hawaii case with $389.7 million in assets and 33 percent of the market. Said ten cases involved much larger banks in urban areas such as New York City, Honolulu, Hawaii, Houston, Philadelphia, St. Louis, Los Angeles, San Francisco, and Chicago. (IX-1, A. 831, R. 1438) These ten bank merger cases involved trust departments which were among the nations largest. (IX-5, A. 839-50, R. 1438). After the proposed merger Phillipsburg National and Second National would move to the 1323rd place on the list of banks with trust powers in the nation, and its percentage of such trust assets would be less than .005. This resultant bank would hold .87 percent of the total trust assets in the Allentown-Bethlehem-Easton standard metropolitan statistical area and be the ninth ranked bank in terms of trust assets. (IX-5, A. 840, R. 1438)

The significance of this proposed merger is readily seen by comparing its percent of commercial and industrial loans with the ten other contested Clayton Act § 7 bank merger cases. The combined commercial and industrial loans of these two banks would be 14.6 percent of the loan portfolio whereas in the other ten litigated cases the percentages of commercial and industrial loans were 21.6 percent, 38.3 percent, 58.8 percent, 44.4 percent, 39.4 percent, 54.3 percent, 27.8 percent, 58.1 percent, 53.5 percent and 33.4 percent of the loan portfolios. (IX-2, A. 834-5, R. 1438). The loan structure of all commercial banks in the United States shows that commercial and industrial loans are 36 percent of all loans for all banks. (IX-11, A. 854, R. 1438).

The total deposits of the ten contested Clayton A§ 7 bank merger cases ranged from in amounts, for tdates indicated in IX-3 from $5,189,774,639 for tManufacturers Hanover case to $336,415,959 in tFirst National Bank of Hawaii case. The resultabank in the case before this Court will have $3362,828 in total deposits. (IX-3, A. 836-7, R. 1438)

All United States commercial banks in 1967 had percent of their total deposits in demand deposits aof that 38 percent were in IPC (individuals, partneships and corporations) deposits. Commercial bankin Pennsylvania in 1967 had 46.5 percent of their totdeposits in demand deposits and of that 37.8 percewere in IPC deposits. Commercial banks in NeJersey in 1967 had 45.6 percent of their total depositin demand deposits and of that 37.8 percent were iIPC deposits. Phillipsburg National and Second National combined for 1967 had 28.9 percent of its totdeposits in demand deposits and of that 24 percewere in IPC deposits. (IX-8, A. 852, R. 1438)

All United States commercial banks in 1967 had 4percent of their total deposits in savings and of th42.8 percent were in IPC savings. Commercial bankin Pennsylvania in 1967 had 53.5 percent of theitotal deposits in savings and of that 49 percent were iIPC savings. Commercial banks in New Jersey i1967 had 54.3 percent of their total deposits in savingand of that 52.1 percent were in IPC savingsPhillipsburg National and Second National combinefor 1967 had 71.1 percent of its total deposits in savings and of that 69 percent were in IPC savings.

All commercial banks in the United States had on24.3 percent of their loans in real estate loans com

pared with 71.8 percent for Second National and 53.9 percent for Phillipsburg National or 61.4 percent for the combined banks. (IX-11, A. 854, R. 1438).

From an analysis of the activities of the participants to this bank merger it can be concluded they were more like savings and loan institutions than commercial banks. (A. 266-267; 493). Both stressed mortgage loans and both emphasized time and savings deposits rather than demand deposits. (A. 493; DX-4, A. 788, R. 776)

All banks in Phillipsburg, New Jersey do their banking business within a 25 mile radius of Phillipsburg. (A. 43; 51-52; 206; 74; R. 206) The Washington Trust Co. in Washington, N. J. located 12 miles from Phillipsburg (DX-33, A. 813, R. 776) does banking business in a 20 mile radius of Washington; and, the Hunterdon County National Bank located in Flemington, N. J., with branches in Clinton, High Bridge, Spring Mills, Frenchtown and Lambertville does banking business in a wide area which includes Phillipsburg and Easton. It does banking business in a 23 mile radius in every direction. Phillipsburg National does banking business in its home territory. (A. 470-472; 483). The First National Bank of Belvidere located in Belvidere, N. J., which is approximately 11 miles from Phillipsburg does banking business in a 10 to 15 mile radius. (A. 563-564). An Easton, Pa. banker considers the geographic market area for his bank to be all of Northampton and Burke counties in Pa., all of Warren County in N. J., and parts of Monroe and South Carbon Counties in Pa. (A. 388). Union Bank & Trust of Bethlehem's geographic area in Northampton and Lehigh counties in

The total deposits of the ten contested Clayton Act § 7 bank merger cases ranged from in amounts, for the dates indicated in IX-3 from $5,189,774,639 for the Manufacturers Hanover case to $336,415,959 in the First National Bank of Hawaii case. The resultant bank in the case before this Court will have $38,362,828 in total deposits. (IX-3, A. 836-7, R. 1438)

All United States commercial banks in 1967 had 51 percent of their total deposits in demand deposits and of that 38 percent were in IPC (individuals, partnerships and corporations) deposits. Commercial banks in Pennsylvania in 1967 had 46.5 percent of their total deposits in demand deposits and of that 37.8 percent were in IPC deposits. Commercial banks in New Jersey in 1967 had 45.6 percent of their total deposits in demand deposits and of that 37.8 percent were in IPC deposits. Phillipsburg National and Second National combined for 1967 had 28.9 percent of its total deposits in demand deposits and of that 24 percent were in IPC deposits. (IX-8, A. 852, R. 1438)

All United States commercial banks in 1967 had 49 percent of their total deposits in savings and of that 42.8 percent were in IPC savings. Commercial banks in Pennsylvania in 1967 had 53.5 percent of their total deposits in savings and of that 49 percent were in IPC savings. Commercial banks in New Jersey in 1967 had 54.3 percent of their total deposits in savings and of that 52.1 percent were in IPC savings. Phillipsburg National and Second National combined for 1967 had 71.1 percent of its total deposits in savings and of that 69 percent were in IPC savings.

All commercial banks in the United States had only 24.3 percent of their loans in real estate loans com-

pared with 71.8 percent for Second National and 53.9 percent for Phillipsburg National or 61.4 percent for the combined banks. (IX-11, A. 854, R. 1438).

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Pennsylvania and Warren County and portions of Hunterdon County in New Jersey. (A. 457). Easton National Bank, Easton, Pennsylvania, Union Bank, Bethlehem, Pennsylvania, and Merchants National Bank, Allentown, Pennsylvania, all solicit and send travelling bank representatives into the Phillipsburg area seeking all types of banking business. (R. 138-142). There is direct competition between The Lafayette Trust Company in Easton and the Allentown and Bethlehem banks, and the banks in Northhampton County and Phillipsburg. (A. 389-390).

All the Phillipsburg banks and commercial banks in Flemington, Milford, Bethlehem and Riegelsville advertise in the Easton papers. (A. 368-369; 559; (DX-51, A. 825, R. 1090; DX-52, R. 1090-1, R. 1090; DX-53, R. 1090-1, R. 1090; R. 1096). Also an Easton, Pennsylvania savings and loan association and the Nazareth Savings and Loan Association, Nazareth, Pennsylvania advertise in the Easton newspapers. (A. 275; DX-56; A. 828, R. 1091) The Easton Express newspaper's circulation covers a radius of 15-20 miles. It covers the eastern portion of Northampton County, Pennsylvania, and is the dominant newspaper in Warren and Hunterdon counties in New Jersey. (A. 363-364; R. 1080) National companies which advertise in the Easton Express look at the standard metropolitan statistical areas when developing a product or selling an item through advertising. The Allentown-Bethlehem-Easton standard metropolitan statistical area is such a metropolitan area. (R. 1080-1081). Factors backing up the standard metropolitan statistical area concept is the interrelationship of buying throughout the area, i.e., people shop from one area to another. (A. 366)

Phillipsburg National has over 40 percent of its single payment loans emanating from outside of appellant's alleged geographic area, and Second National has 30 percent of such loans outside plaintiff's geographic area. (A. 500; DX-40, A. 819-20, R. 776, D-40). Phillipsburg National has 32 percent of its business by dollar volume emanating oustide plaintiff's alleged geographic area while Second National has 13.8 percent from outside said area. (A. 500). Easton National Bank and Trust has 95 percent of its mobile home loans originating outside plaintiff's alleged geographic area, and 36 percent of its indirect automobile loans originating outside said area. (R. 502). A substantial amount of Phillipsburg National's and Second National's demand deposits, time deposits and real estate loans come from outside plaintiff's alleged geographic area of Easton-Phillipsburg. (A. 500-501; GX-19, G-19; R. 85; G-21, A. 731-2, R. 85). All of this business done outside of plaintiff's alleged geographic area is substantial and demonstrates significant activity outside plaintiff's alleged area. (A. 500-501).

As of May 1967 the Reigelsville branch Reigelsville, Pa., of Girard Trust Bank of Philadelphia had 29.59 percent of its $11,787,400 total savings and demand deposits coming from customers with addresses in Easton or Phillipsburg. Of its total savings accounts $583,771 or 11.10 percent came from customers in Milford, New Jersey. This branch of Girard Trust had $1,793,700 or 37.16 percent of its savings bond accounts from customers with addresses in Easton, Pa. The Reigelsville branch derives 1/3 of its business from Phillipsburg-Easton and environs although it is located in Bucks County, Pa. (A. 498; DX-11, A. 801, R. 776). Said branch of Girard Trust advertised in

Reigelsville, Warren and Hunterdon counties in New Jersey and in Easton, Pa. (DX-21, R. 776 R. 776; DX-22, R. 776 R. 776; DX-25 R. 776 R. 776; DX-27, R. 242, R. 242).

Said Reigelsville branch had 95 percent or $5,005,307 of its savings accounts coming from addresses within intervenor's and defendant's defined geographic areas, while 18.8 percent came from addresses within plaintiff's defined area. 87 percent or $1,397,175 of the demand deposits and 90.70 percent or $4,469,200 the savings bond accounts in the Riegelsville branch came from addresses within intervenor's and defendant's defined geographic areas. (DX-11, A. 801, R. 776).

The trading area to be considered for the banks in this merger is all of Warren County, Northwest portions of Hunterdon County in New Jersey, Northeast portions of Bucks County, Northampton and Lehigh Counties in Pennsylvania. (A. 496; 544).

Because of the shopping and working patterns existing in the intervenor's and defendant's trading area, the good highway system and the short driving time involved, convenient banking alternatives exist for a resident of Phillipsburg or any other town within the area, throughout the entire area. (A. 195-196; 366; 499)

The Hess Brothers, Allentown, Pa., delivery schedule shows 3 deliveries per week to Phillipsburg for furniture and other goods. (A. 499; DX-34, R. 776, R. 776; DX-35, R. 776, R. 776). McGinley Mills mailing list of 18,444 persons who signed their book in their Phillipsburg store requesting they be notified of sales shows 12,712 with addresses within intervenor's and defendant's trading area and a substantial num-

ber from Allentown and Bethlehem. (A. 330-331; DX-50, A. 824, R. 1004)

Two Phillipsburg automobile dealers, a food department store owner, a trucking company, an appliance dealer, and a contractor testified as to their trading area, which ranged from a 15 to a 35 mile radius. (A. 423-424; 428; 432-433; 437; 533-534). Orr's Department Store delivers merchandise free throughout the Allentown-Bethlehem-Easton standard metropolitan statistical area. (DX-57, R. 1102-4; R. 1103). Customers will shop at Orr's Store in Phillipsburg and go to the Orr's Store in Bethlehem and shop on the same day. The business and shopping geographic area is a 25 mile radius of Phillipsburg. (A. 372-373)

The labor force in the intervenor's and defendant's trading area is mobile. Because of the mobility of the labor force people who work in Phillipsburg, Bethlehem, Nazareth and Reigelsville will work in Easton. (A. 389). Almost one half of the people working at the Ingersoll Rand plant in Phillipsburg come from Easton, Bethlehem and Allentown. (A. 258; 287). Employees of Reigel Paper Co., Milford, New Jersey; Sanco Dye Works, Phillipsburg; and Orr's Department Store in Phillipsburg commute to work from such towns as Easton, Bangor, Nazareth, Bethlehem, Allentown, Washington, Belvidere, Warren Glen, Flemington, and Hughesville (A. 259-260; 373-374; 499-500; 45-46; DX-36, A. 814-5, R. 818). The Allentown, Bethlehem, Easton and Phillipsburg area is one integral area. (A. 366-367)

The mileage to and from Phillipsburg in the trading areas contended by intervenor and defendant range

from 6½ miles from Nazareth, Pa., and 7 miles from Bloomsburg, N. J., in Hunterdon County to 24½ miles from Blairstown, N. J. in Warren County. Allentown is 16 miles west of Phillipsburg. The driving times in said area range as follows: 6 minutes from Riegelsville, Pa., 11 minutes from Washington, N. J. in Warren County; to 25 minutes from Allentown, Pa., and, 27 minutes from Hackettstown, N. J. in Warren County. (DX-33, A. 813, R. 776)

Phillipsburg National has 2.0 percent of the total commercial banking assets in Intervenor's Trading Area B, Second National has 1.4 percent, and the resultant bank would have 3.4 percent. (IX-25, A. 863, R. 1438) Phillipsburg National has 2.0 percent of the total deposits of all commercial banks in Intervenor's Trading Area B, Second National has 1.5 percent, and the resultant bank would have 3.5 percent. (IX-18, A. 857, R. 1439, IX-23, A. 862, R. 1438). Phillipsburg National has 2.3 percent of the loans of all commercial banks in Intervenor's Trading Area B, Second National has 1.7 percent of the loans, and the resultant bank would have 4.0 percent. (IX-20, A. 859, R. 1438).

The merged Phillipsburg National and Second National would have 2.8 percent of the IPC demand deposits of all commercial banks in Intervenor's Trading Area B, and 3.8 percent of the IPC time deposits. (IX-18, A. 857, R. 1439).

Economic and Industrial Growth

Downtown Phillipsburg has deteriorated (A. 292; R. 280). Easton and Phillipsburg are stagnant. (A. 319). The population of Phillipsburg has stayed at about 18,500 over the last 15 years. (A. 262). The downtown area in which the main offices of Phillips-

burg National and Second National are located is right near skid row. The area lacks modern buildings and parking space, and the traffic patterns are not good. (A. 155).

The growth in the area is in the suburbs of Phillipsburg and other areas of Warren, Northampton and Lehigh Counties. (A. 261-262; 155; R. 281-282). The growth areas in Warren County are to the northwest from Phillipsburg including Harmony, Lopatcong, Greenwich and White Townships, and to the southeast including Pohatong, Bloomsburg and northwest Hunterdon County, N. J. (A. 261-262). A residential complex is commencing north of Hackettstown, and growth is expected in the Belvidere area, both towns are in Warren County. (R. 335-337). The area growth is visible when one travels by car from Washington, N. J. to Allentown, Pennsylvania. One can see growth in new industrial plants and a decrease in farm lands and vacant lots. (R. 282; 375). The growth already taken place and the anticipated growth in the next few years in Warren County is expected to increase primarily because of industry coming into the area and the two new highways, Interstate Routes 78 and 80. (A. 335-336; 410-411; R. 1025-1026). There has been fairly rapid commercial and industrial growth throughout the Warren and Hunterdon County area. (R. 1023; A. 340)

The general area has grown industrially in the last 5 years with new plants having been built by such concerns as IT&T, Fairmont-Lavalle, S&I Handling Systems and Lavalette Corp. (A. 137-138). Said area has grown through expansion and increased business of firms already in the area such as, Sun Tube Company, Hoffman-LaRoche in the Hope-Belevidere J. N. area,

Pearsall Chemical Company, Riegel Paper Company, and Nytronics, Inc. (A. 263; 336-337; 359; 387; R. 505-506). In the area are such firms as Ingersoll-Rand, Baker Chemical Company; Dixie Cup division of American Can; and Bethlehem Steel. (A. 137; R. 505). Proctor and Gamble is on the verge of building a new plant in Raritan Township near Flemington and U. S. Radium, which has started to break ground for a new plant, will be located in Beattytown which is near Hackettstown. (A. 335-336).

Product Market or Line of Commerce

Commercial banks compete for the savings dollar with other commercial banks, savings and loan associations, building and loan associations, savings bank, mutual funds, insurance company's short term certificates, commercial paper, pension funds, credit unions, and the stock market. (A. 71-72; 107-108; 158-159; 250-251; 298-300; 313-315; 317-318; 448-449; 475-476; R. 335-336; 386-387; 492; 960).

Commercial banks compete for the extension of credit with savings and loan associations, finance companies, credit unions, insurance companies, small loan companies, savings banks, and department store credit departments. (A. 72-74; 90-91; 159-160; 315-316; 361-362; 393; 449-450; 476-477).

Defendant's exhibits D1, D2 and D3 show the dollar amount and percent of the national market held by various financial institutions in the savings and lending fields. (DX-1, A. 781-2, R. 776; DX-2, A. 783-4, R. 776; DX-3, A. 787, R. 776).

Even plaintiff's expert witness, Franklin Edwards, agreed there is competition for the savings dollar be-

tween commercial banks and insurance companies' mutual funds, savings and loan associations, credit unions, stock market brokers, securities salesmen, pension funds and individual trusts. (A. 237-238; 240). Dr. Edwards also agreed there is competition for the extension of credit between commercial banks and building and loan associations, credit unions, finance companies, credit card companies such as American Express and Diners Club, department stores, insurance companies, and mutual savings banks. (A. 238-241)

Appellant's brief admits commercial banks compete with other financial institutions for the savings dollar and for the extension of credit. (Appellant's brief p. 25)

Effect of New New Jersey Banking Law

In assessing the competitive effects of this bank merger the New Jersey Banking Law must be considered. (A. 208). William B. Luklider, President, United Savings Bank, Newark, N. J., which has footings of around $242 million, (A. 446) testified that when the new New Jersey Banking Law was signed into law by the Governor, the United States Savings Bank, as well as others, will be looking throughout the First banking district for bank locations. Newark will be in the same banking district as Warren County. (A. 453-454). Chief counsel for the plaintiff admitted that if the new banking act does become law potential competition might increase very substantially in the area. (A. 454) In the argument, subsequent to the District Court's opinion, to continue the stay and open the record for supplemental evidence, counsel for plaintiff claimed he did not deny that changes had taken place in New Jersey as a result of the revised New Jersey Bank Act. (A. 575).

The new New Jersey Banking Act was signed by the Governor on January 17, 1969, and became effective six months later, July 17, 1969. (N. J. Stat. Ann. § 17.9A-19(F) (Supp. 1969). The new act retains the home office protection proviso with respect to *de novo* branching, while merger is permitted in any area. (N. J. Stat. Ann. § 17.9A-19(B)(3) (Supp. 1969). Under the new act, the State of New Jersey is subdivided into three banking districts. District-wide merger is permitted as well as *de novo* branching, excepting *de novo* branching is subject to the restraints contained in the original act (N. J. Stat. Ann. § 17.9A-19(F) and 19(B)(3) (Supp. 1969); so admitted in appellant's jurisdictional statement (p. 9).

The first banking district is a seven-county district which includes Warren, Hudson, Essex, Passaic, Morris, Sussex and Bergen Counties. Not only are commercial banks permitted to merge and branch district-wide, but so also are savings banks and building and loan associations. (N. J. Stat. Ann. § 17.9A-19, Supp. 1969. N. J. Stat. Ann. § 17.12B-26). The first banking district is the most populous in the state. (1960 Census of Population, Vol. 1, pp. 32-13 to 32-15). The largest banks in the state are located in this district, (IX-30 A. 868-70, A. 581; American Bank Directory Fall Ed. 1969, pp. 2095-2177) such as, First National State Bank of New Jersey, with deposits of $659,591,000; Fidelity Union Trust Company, with deposits of $619,613,000; National Newark and Essex Bank, with deposits of $579,860,000; Peoples Trust of New Jersey, with deposits of $502,531,000; and New Jersey Bank, with deposits of $438,105,000. Within the first banking district, as of June 30, 1969, Phillipsburg National ranks 44th with .37 percent of the total

deposits and second National ranks 58th with .24 percent of the total deposits; combined, these two banks would rank 26th with about six tenths of one per cent of total deposits, or .61 percent of total deposits. (IX-30, A. 868-70, A. 581).

Before the passage of the new act in 1968, there were 22 applications for branches in the counties making up the first banking district; in the first nine months of 1969, after the passage of the act, there were 119 branch applications. Already, large and substantial banks have begun to move into the various counties in the first district either by merger or branching. The National Newark and Essex Bank, third largest in the district, headquartered in Newark and holding total deposits of over $579 million has obtained approval of a merger in Warren County with Washington Trust Company, Washington, New Jersey. Washington Trust has deposits of $16 million and offices in Oxford and White Townships. Peoples Trust Company of New Jersey, fourth largest in the district, headquartered in Hackensack and holding deposits of over $502 million has filed an application to merge in Warren County with Peoples National Bank of Hackettstown, a bank with $19 million in deposits. Also, Trust Company National Bank of Morristown, New Jersey, the eleventh ranked bank with deposits over $166 million, has applied for a branch in Warren County in Harrison Township. (A. 572-573; IX-30, A. 866-78, A. 581).

When the Department of Justice submitted its report to the Comptroller of the Currency with regard to the proposed merger of the Washington Trust Company into the National Newark and Essex Bank, Newark, New Jersey, the Justice Department fully

recognized the significant changes which the new law had produced and stated the merger would not have any significant effect on existing and potential competition. It clearly stated that "the recent broadening of the geographic boundaries of permissible branch office operations by commercial banks in New Jersey has induced substantial market activity both by *de novo* branching and by merger." The competitive report stated in conclusion (p. 4) "Therefore, this acquisition of one of the smallest banks in the First Banking District does not seem likely to have a significantly adverse effect on potential competition." (IX-30, A. 880-3, A. 581) (pp. 3-4 of Justice Report). The competitive report by the Board of Governors of the Federal Reserve Board (p. 2) on the same merger also recognized the changes which the new law had produced and reached the conclusion the merger would have no adverse competitive effects. (IX-30, A. 876-7, A. 581).

Competitive Effects

The merger will have no harmful effects on any bank or anyone in the community. (R. 160-161 Riciardi deposition). There will be no meaningful or measurable anticompetitive effect from this merger because of the ease of entry into the banking business as well as the savings and loan business and the mutual savings bank business. (A. 503; DX-10, A. 800, R. 776). Although plaintiff's expert witness's study suggested harmful effects indicating that after a merger the rate paid on savings deposits, deposits decreased and the interest rate for loans increased, the overwhelming experience of other witnesses, practically all bankers, has been the rates paid on savings either increased or remained unchanged and the interest rate

for loans remained unchanged. (A. 379-380; 387; 394; 447-448; 461; 477-478; 504). Although participating in prior mergers, no such witness knew of any instance where a merger has led to higher interest rates on loans to small businessmen. (A. 379-380; 387; 394; 448; 461). Plaintiff's expert witness agreed that economists differ over whether his study that higher concentration could result in higher loan rate is true (A. 232-233). Rates of interest paid on time and savings deposits by banks in the $25 to $50 million group are higher than the rate paid by smaller banks and the interest charges on loans are less.

Phillipsburg National and Second National have not been aggressive in the past because of their size and capital structure and their merger will not be eliminating a significant competitive factor. (A. 547-548). The merger is pro-competitive in that it will add a new and significant competitor and create a bank with the ability and specialists to furnish services it was unable to supply in the past. (A. 502-503). An Easton banker testified the merger specifically will intensify competition between Phillipsburg and Easton banks and eliminate the existing apathy in banking competition in the area. He added the merger would benefit the public by increasing and intensifying competition generally in the area. (A. 391). Another banker in Hunterdon County testified the merger would be pro-competitive and result in better and tougher competition in the area. (A. 477). Still another banker testified the merger would be pro-competitive and benefit the community with new and younger personnel and expanded services. (A. 461-462).

No trend toward banking concentration can be found in the geographic area and neither Phillipsburg nor

Second National have been involved in prior mergers. (DX-10, A. 800, R. 776). The concentration of bank deposits in the commercial banks in the Allentown-Bethlehem-Easton standard metropolitan statistical area as of June 30, 1966 was extremely low. (A. 501; 502; DX-8, A. 794-6, R. 776). The percentage share of the largest, the three largest and the five largest commercial banks in said area will not be changed after the merger. (A. 502; DX-8, A. 794, R. 776).

Concentration ratios by themselves are meaningless and unreliable. Concentration ratios in and of themselves show nothing as to the types of competitors or the effect on competitors after a merger. Concentration ratios must be considered together with the structure of the market and the appropriate or relevant product market. Concentration ratios may be helpful in conjunction with other data in increasing our understanding of competition. (A. 522-523; 548).

The Allentown-Bethlehem-Easton standard metropolitan statistical area concentration ratio is low and in fact one of the lowest in the 50 or 60 SMSAs where branch banking is legal. (A. 501; DX-8, A. 994-7, R. 776).

Convenience and Needs Management and Personnel Problems

The ages of the top management at both banks to this merger is above normal retirement age. Mr. Curry, President of Phillipsburg National is 71, Mr. Pursel who is President of Second National is 80, and Mr. Lester Pursell who is executive vice president of Second National is over 70 years of age. (A. 264; 324; 664).

The President of Second National is 80 years old and would like to retire. (A. 660).

Although Mr. Pursel thinks Lester Pursell could take over the reins as President if Mr. Pursel retires, Lester Pursell does not want the job, as he is 70 years old, and he too wants to retire. (A. 660; 664).

The president and chief executive officer of Phillipsburg National is 71 years of age and anxious to retire and the Executive Officer is 59 years old going on 60. (A. 264; 324).

Advanced age of bank management has an adverse influence on the competence of that management. Compulsory retirement age at First National Bank in Bethlehem is 65 years of age. (A. 110; R. 390-391). The growth rate of a bank depends on the caliber of its management. (R. 1455-1456).

A Newark, New Jersey correspondent banker was consulted by Second National in 1965 seeking advice about its condition. The banker recommended to the Board of Directors of Second National, after studying problems, that Second National needed three new men, one for trusts, one for mortgages, and one for general operations in the bank. (A. 151-153).

Second National presently is in desperate need of younger men to replace the aging management. (A. 442; 660-661). Phillipsburg National needs more personnel but it has been unable to develop it within its own ranks. (A. 649).

As a bank grows it becomes essential to hire specialists. Small banks do not grow personnel-wise from within the bank, in the few cases it was tried the results were inadequate; hence, the constant search for talent on the college campus, although many small banks are precluded because of the high demands of the graduate. (A. 384-385). An assistant vice-presi-

dent of the First Pennsylvania Bank and Trust Company, the largest bank in Philadelphia, testified that he is his bank's representative for correspondent banks and deals with 70 to 80 such New Jersey correspondent banks who are constantly calling him seeking bank personnel. (R. 1443-1445). Salary scale is important and if a bank wants competent personnel it must be willing to pay proper salaries. (A. 105).

The starting salary expected by prospective college graduates without banking experience is from $7,500 to $8,500. The prospective employee with graduate school training or banking background expects from $11,000 to $15,000 per year. (A. 474; 506-507).

Second National was advised in 1965 by its correspondent banker, whose help it sought, that it could expect to have to pay a yearly salary to a mortgage officer in the range of $9,000 to $14,000; to a general operations officer approximately $10,000 to $14,000; and to a trust officer about $14,000 to $15,000. However, as of the time of trial of this case in the District Court the salary ranges had increased so that the mortgage officer would receive about $15,000; the general operations officer about $16,000; and the trust officer about $18,000 (A. 151-152).

The Assistant Vice President of First Pennsylvania Bank and Trust Company stated the salary scale for a trust officer is $18,000 to $22,000; for a commercial and industrial loan specialist is $18,000 to $20,000; and for a mortgage specialist about $16,000. (A. 537).

Trust Needs

The President of the First National Bank and Trust Co. of Bethlehem, which bank had assets of $115,327,000, testified the yearly salary range for a

competent trust officer would be $15,000 to $20,000 and an experienced commercial lending officer's yearly salary would be $20,000 to $25,000. (A. 112-113).

The salary scale at Phillipsburg National compared with banks of the same size is in most instances very much below the scale. (A. 645). The salary scale for presidents of banks with total assets of $30 million to $50 million $25,000 to $30,000 a year. (A. 536).

Phillipsburg National principal employees received the following salaries, including bonus, for 1967:

President	$19,134
Cashier	12,371
Assistant Trust Officer	9,410
Consumer Loan Officer	9,010
Assistant Cashier	8,830
Two other assistant cashiers	6,950 ea.
One other assistant cashier	6,362

(IX-28, A. 864-5, R. 1439).

Second National's principal employees received the following salaries, including bonuses, for 1967:

President	$11,544
Exec. Vice President	12,563
Cashier	9,346

The five other officers received salaries and bonuses totaling a low of $5,379 to a high of $9,159 (IX-28 A. 864-5, R. 1439).

Neither Phillipsburg National or Second National have a full-time trust officer. Neither can afford to hire a full-time trust officer. (A. 325; 655; R. 240-241 Curry deposition). At present there is no full-

time trust officer in Warren County. (A. 281). Second National's trust department is so small it would be ridiculous to consider hiring a full-time trust officer. (A. 657). Its trust assets amount to $125,000. (IX-5, A. 840, 850, R. 1438). A trust department embarking on a full scale program needs 7 to 8 years before it breaks even. (A. 112-113; 162-163) and usually requires $25 to $30 million in personal trusts to break even. (A. 112-113). It would cost $100,000 to operate a trust department properly. (A. 111-112).

A bank cannot have an aggressive trust department without a full-time trust officer. (A. 92; R. 394). Phillipsburg National's trust activity is limited because it doesn't have a full-time trust officer to develop it. (A. 632). Its total trust assets amount to $2,331,000. (IX-5, A. 840, 849, R. 1438). Trust business will not grow unless a bank solicits such business and at present Phillipsburg National does not solicit trust business and has an antiquated trust department. (A. 166; 265). You can't find a competent trust officer to run a $2 million department. (R. 876).

Bankers and businessmen testified there is a demand for trust business in the area. (A. 291; 354; 358; 374-375; 390; 539-540; 654; 265; R. 1306-1307). There is a need existing in Warren County to service trust accounts and pension trusts. (A. 60; 655). A number of businessmen testified there was a need in the area for a full-time trust officer to handle company pension funds. (A. 329-330; 354; 358; 439; 486). Several business executives testified if a full-time trust officer was available, their company trust funds would be turned over to the merged bank. (A. 358; 374-375; 486; 491). As proof of existing trust business the Philadelphia banks are actively seeking such business in the area. (A. 106).

Commercial and Industrial Lending Needs

At present no Warren County bank has a commercial and industrial (hereinafter referred to as C & I) specialist. (A. 331-332; R. 880). There is an increasing demand for C & I loans in the area. (A. 631). The expansion and influx of industry into the area has increased the need for more C & I loans. (A. 267; 329; 337; 539). The industrial growth in Warren County as well as the anticipated growth demonstrate the need for a full-time C & I specialist. (A. 639-641; R. 169-171 Daubert deposition).

The proper handling of C & I loans requires a specialist in the field who must be able to give advice to business on how to conduct their business and he should be able to personally call on the business establishments. (R. 393). If a C & I loan specialist had been available for business advice at the Phillipsburg bank McGenley Mills would have been able to acquire another company. (A. 331-332).

The hiring of a C & I loan specialist by these banks separately is not possible at the present time because of salary and insufficient business as individual banks. (A. 279; 639; 640-641; R. 260 L. Pursell deposition; R. 174 Daubert deposition). The Executive Vice President of Second National does not see how his bank can be a factor in the C & I lending field without the merger, as the bank needs a C & I specialist and it cannot hire one without the merger. (A. 656-657).

Need for Mortgage Specialist

Both Phillipsburg National and Second National need a mortgage specialist. (A. 267-268; 462). Phillipsburg National cannot afford to hire a mortgage specialist without a merger. (A. 639).

Phillipsburg National needs a mortgage loan officer that has been trained in appraisals and developing mortgage loans and to handle the entire portfolio thereby relieving the bank directors from making property appraisals. After the merger, a full-time mortgage officer could do all this for the resultant bank. (A. 639).

Higher Lending Limit Need

The lending limits of Phillipsburg National and Second National for the year 1967 were $120,326 and $131,468, respectively. The lending limit of the resultant bank after merger will be approximately $250,000. (GX-6, A. 712-3, R. 85).

The lending limit at Phillipsburg National has posed a serious competitive handicap to the bank and a number of accounts have been lost because of the inability of the bank to lend larger sums of money. (A. 637-638). Even though most borrowers know, without asking, what a bank's lending limit is and therefore never make an application for a loan over such lending limit. (R. 258 L. Pursell deposition). Nevertheless, Phillipsburg National has about 25 requests per year and Second National 10 to 12 requests per year for loans that exceed their lending limits (A. 638; R. 166 Daubert deposition).

While it is possible to participate many loans, some borrowers prefer not to participate and would rather get all their credit from one source. (A. 444; 488-489). Loan participations are objectionable because the borrower is required to establish his credit standing and worthiness to a second and a third banker who is unknown, and there is additional inconvenient paperwork. It is inconvenient to be dependent for such

banking services on more than one bank. (R. 163-164 Ricciardi deposition).

Furman Denton, Executive Vice President of First National State Bank of New Jersey, with deposits as of June 30, 1969 of $659,591,000, headquartered in Newark, testified that participations have the potential disadvantage of losing the customer to the larger city correspondent bank. Also, participating loans with a larger bank is not always feasible as the larger city correspondents may not have the funds available because of other credit needs. He stated he knew of instances where his bank refused to participate in a loan to customers of smaller correspondent banks. (A. 382-383; R. 1126).

A Phillipsburg appliance store reached the lending limit at Phillipsburg National and was compelled to borrow at First Pennsylvania Bank and Trust Company in Philadelphia, although the customers preferred to bank locally. (A. 428-429). A textile manufacturing concern located in Phillipsburg borrowed $600,000 from Philadelphia National Bank because the local banks couldn't handle this large a loan. (A. 333). The former mayor of Phillipsburg testified he tried unsuccessfully to get a motel loan of $250,000 at the Phillipsburg banks. (A. 433). An Alpha, New Jersey, tool manufacturer testified a larger bank would help his company because his loan requirements are higher than Phillipsburg National or Second National separately can handle. (A. 353).

Both Phillipsburg National and Second National are unable because of their small lending limits to floor plan automobiles. (A. 476-477). The Phillipsburg Ford automobile dealer tried to get a $150,000 line of credit from Phillipsburg National for floor

planning of cars but it was over the bank's lending limit. (A. 418). The increased lending limit resulting from the merger will allow the resultant bank to floor plan at least three automobile dealers in the area. (A. 412-413; 445-446).

A Phillipsburg contractor has a line of credit at Phillipsburg National Bank of $115,000 but his needs are for more and the resultant bank will increase his line of credit to $250,000. (A. 323; 324). Orr's Department Store and also a Phillipsburg chemical manufacturer both prefer to do their banking locally because of convenience. Both will have need of credit in the several hundred thousand dollar range, the resultant bank would be of great aid to them. (A. 375; 358-360).

Other small businessmen testified that the increased lending limit of the resultant bank would help them. (A. 276-277; 290; 387; 486-487).

The community would be benefited as a result of the merger because larger borrowers would be able to get their credit requirements satisfied in Phillipsburg rather than going to New York, Philadelphia or elsewhere. The local bank will be serving local customers, otherwise the loans and correspondent deposits would flow outside of Phillipsburg to the benefit of other cities. (A. 529).

There is a demand in the area for higher lines of credit and for higher lending limits. Phillipsburg National has been restricted in loans. (A. 248-250). To small banks the size of Phillipsburg National and Second National who wish to build C & I loan business, lending limits are very important. (A-111).

The merger will increase the lending limit of the bank and this will be beneficial for the area. (A. 157).

Merger Necessary for Banks To Grow and for Their Ability To Serve

The only possible way to grow in Phillipsburg is by merger not by internal expansion. (A. 443). The growth of Second National and Phillipsburg, without the merger, will be limited to the possible growth in the economy (A. 540; R. 133-134 Casteline deposition) and not by reaching out, for the development of business. (R. 133-134 Casteline deposition). Both the President and the Executive Vice President of Second National stated the growth at their bank has leveled off. (R. 9-10 H. Pursell deposition; R. 225 L. Pursell deposition).

If a bank is to actively grow and seek out C & I loans and be a commercial force for the good of the community, it must have skilled technicians or specialists who can call on businesses and offer business advice and banking services, which businessmen expect. (A. 655; R. 1455-1456). Neither Phillipsburg National or Second National has a man on the road conducting a call or soliciting any type of business. But after the merger, the resultant bank could. (R. 209, 211 Curry deposition; R. 259 L. Pursell deposition; R. 163 Daubert deposition).

A $40 million bank can serve its community better than an $18 million bank as it has more services available in a wider geographic area and it can acquire better qualified personnel. (R. 131-132 Casteline deposition). A larger bank can do more for the community in the way of civic projects such as the Board of Education, hospital boards of trustees and municipal government. (R. 1307-1308). Larger banks ($25 to $50 million) provide more in credit services than do smaller banks. (A. 546).

C & I lending is vital to the community service it not only directly benefits the borrowing company in expansion but also provides employment in the community. (R. 1470-1471).

Additional advantages in serving the convenience and needs of the community will stem from the economics of resale that will result from the merger. For three types of loans, namely, real estate, consumer, and C & I loans plus time and demand deposits, after merger there should be $22,000 savings or reductions per year and $50,000 cost savings or reductions in operating cost after the merger. Such savings could be invested in branches, for expansion after the merger. (A. 505-506).

While it is not feasible for these banks to open additional branches separately, after merger the resultant bank can open branches. (A. 173; 441-442; 484). The Board of Directors of Second National have given no thought to opening a new branch, the bank cannot afford to open a new one, but if it merged the resultant bank would be in a much better position to branch. (R. 17 H. Pursell deposition; R. 277 L. Pursell deposition; R. 176 Daubert deposition)

Both Phillipsburg National and Second National need more capital. (A. 156-157; 171; 173-174). Second National's ability to compete for commercial accounts has been limited because of capital deficiency. (R. 117 Daubert deposition). Because of the capital structure at Phillipsburg National it cannot afford to hire new personnel. (R. 247 Curry deposition). After the merger the resultant bank will be better able to attract capital and it plans to add additional capital. (A. 156; 367).

The merger will aid local businessmen by making available more services and the resultant bank will

have more capacity in lending area and in giving business advice. (A. 359-360; 620). A large bank would provide more convenient branches and more services to the area. (R. 160-161 Ricciardi deposition).

After the trust officer is hired he can assist in directing the investment portfolio policy of the resultant bank. (A. 165-166). A C & I loan specialist would be able to correct the credit files which in small banks leaves must to be desired. (A. 392). Such C & I loan offices, after the merger, would endeavor to seek ways and means of making loans, and creating a source of credit for worthwhile and economic endeavors, thereby advancing the economic enterprises in the area served by the bank. (A. 381).

Attempts to Recruit

The President of Hunterdon County National Bank, with assets of about $60 million, testified that he went out to universities to recruit. He talks to about 200 people each year to get three or four. It takes forty interviews to get one man worth bringing home. (A. 474). William Greenly, Senior Vice President of Fideltiy Union Trust Company, Newark, New Jersey, who was asked by Second National to help them get some competent personnel pointed out to the Board of Directors the difficulty in obtaining personnel, as well as the problem of internal friction and jealousy created by bringing in high-paid personnel. (A. 153). For over a year attempts were made to find personnel to fill management positions at Second National but those who came to Mr. Greenley's attention were "duds that weren't getting along somewhere else," or their personality defects were such it was obvious they wouldn't work out. (A. 153-154).

Mr. Greenley did not specifically put Second National in touch with any potential employees to fill management positions because none of the people he spoke with who were capable were interested in Phillipsburg. An Assistant Vice President at Fidelity Bank in Newark, a Mr. Wilson, rode to Phillipsburg with Mr. Greenley on several occassions and looked the bank over but showed no interest even though he was told the salary range was to be $20,000. (A. 169-170).

A Thomas Armstrong, a Director of Second National for fifteen years, spoke to a Robert Van Buren, a Vice President of Chemical Bank of New York during July 1967 about coming to work for Second National, and also whether he could suggest anyone, but to no avail. Mr. Van Buren wanted a salary in excess of $30,000 per year, plus other committments. (A. 406-407). Mr. Armstrong stated Mr. Seiss, another director, had attempted to attract people and continues to do so. Other members of the Board of Directors have spoken to prospective management candidates, but have been unsuccessful. (A. 406).

Phillipsburg National presently needs more personnel but has been unable to develop or procure it. The President of the bank testified he had not gone out and tried to fill the management gaps as he knows the salaries this replacement personnel are asking and he knows the bank cannot afford to pay such salaries. (A. 649-650). A director of Phillipsburg National testified the President wants to retire and the Directors have had almost weekly discussions on how and where they could find a successor. (R. 988-989). Efforts have been made by Phillipsburg National to obtain competent executives but without success. (A. 264; R. 988-989).

Merger Is the Only Answer

Having no success in recruiting personnel Mr. Greenley suggested that a merger with Phillipsburg National would solve the problems of Second National. (A. 154). Separately these two banks could not afford to hire necessary personnel. (A. 538-539; R. 1306; R. 134 Casteline deposition). They must compete with banks in larger cities for managerial talent. (A. 538-539; R. 1452-1453). The minimum size to be able to hire a C & I loan specialist, a mortgage specialist and a trust specialist would be a bank of between $35 and $40 million. (A. 537-538).

A large bank is better able to attract and afford competent personnel. (A. 92; 142-143; 164-165). Aggressive management cannot be found for these small banks separately even if the entire net earnings of each bank were paid out in salaries. (A. 483).

The merger is essential in order to attract competent personnel and pay the appropriate salaries to replace the older management. (A. 405-406).

A larger bank has less difficulty in attracting new talent and the chances of getting the talent are increased because they can pay the salaries, give fringe benefits and more opportunity for advancement. (A. 164-165; 155-156; 284, 330; 382; 391-392). If the merger is allowed, a C & I loan officer, mortgage officer and a trust officer will be hired by the resultant bank. (A. 285).

Future Prospects

The future prospects of the Phillipsburg National and Second National are not bright as neither can "make it" without a merger. (A. 483; 384). Small banks without continuity of management of younger men are in trouble. The future prospects of these

two banks separately, caused the President of an Allentown bank to testify that he would be "real worried" about their future. (R. 133-134 Casteline deposition).

The future of these two small banks is glum because of the problems of personnel and competition. Generally the future of the small bank is rather glum, because of the problems of automation, personnel, of other facilities and competition. It is not unusual to find authorities in the field of banking pointing this out, that there is a need for growth and that the small bank would reach a position where it is no longer competitive and would be forced to consider some way of fortifying its competitive position. This merger would do just that. (A. 384; 506).

If the merger does not go through, these small banks will not be able to properly service the people and business in the area. Phillipsburg National cannot presently keep pace with the economic growth in the area without a merger. (A. 650).

The immediate problem facing these two small banks is to become large enough to effectively compete with the competition they are presently faced with and with the banking requirements of the business in the area and moving into the area. (A. 540-541).

In view of the amendments to the New Jersey banking statute, which will permit the Newark banks—the largest in the state—to merge and branch in Warren County, these large banks and others in the first banking district have become actual competitors of Phillipsburg National and Second National. (N.J. Stat. Ann. § 17; 911-19, Supp. 1969) (IX-30, A. 866-78, A. 581).

ARGUMENT

Distinguishing Characteristics of the Proposed Merger

Before proceeding to the questions presented by Appellant, this case should first be put in proper perspective in relation to the other contested Section 7 cases, which have attempted to delineate the ruling law for bank merger cases. The Section 7 bank merger cases contested prior to this action were all cases involving large commercial banks located in urban areas abounding with business and industry. Such banks' trust departments were among the country's largest. The demand deposits of said banks ranged from over $5 billion to approximately $340 million. Mortgages on residences and farms were small compared to the commercial and industrial business done by these banks.

The banks involved in the instant case are located in a small town emerging from a rural status. Banking customs are quite different. Customers of these rural banks live many miles from banks and travel good distances to do their banking and financing. These banks have been serving the area by accepting deposits and lending money primarily to finance residences. The commercial and industrial business done by these banks is insignificant when compared to their total business, and to commercial and industrial business done by the large commercial banks mentioned above. The demand deposits are comparatively small while savings deposits represent the bulk of the deposits of these banks. As for size, these two banks combined would have deposits of $38,362,828, while the largest combined banks of the contested cases mentioned above would have $5,189,774,639 and the smallest $336,415,959.

Concentration and restraints of trade in large urban areas with billion dollar banks or at the minimum banks with approximately a half billion dollars in assets must be viewed differently than two banks whose combined assets would be $41.1 million (IX-1, A. 831, R. 1438) and serving a former rural county which has only small country banks. Even though the County is growing commercially and industrially, the local banks are so small they cannot compete aggressively or serve the growing county. Business is compelled to go out of the county and state for adequate financing, trust facilities, business advice, and the many other needed services that should be supplied by the local banks.

Such an approach is consistent with the Supreme Court's statement in *United States* v. *Continental Can Co.,* 378 U.S. 441, 458, (1964) that "a judgment under Section 7 is not to be made by any single qualitative or quantitative test," and that "the merger must be viewed functionally in the context of the particular market involved, its structure, history, and probable future." See also *United States* v. *Crocker-Anglo National Bank et al.,* 277 F.Supp. 133, 157-168, 199 (U.S. D.C. N.D. Calif. 1967). The courts have held that while statistics reflecting market control are important, there must be a further examination of the market involved, including its structure, history, and probable future, in order to provide the appropriate setting for judging the probable effect of a merger. *Brown Shoe* v. *United States,* 370 U.S. 294, 322 (1962). *United States* v. *Jerold Electronics Corp.,* 187 F.Supp. 545 (D.C. E.D. Pa.) aff'd, 365 U.S. 567. In a very recent decision *United States* v. *Tidewater Marine Service Inc., et al.,* 284 F.Supp. 324 (D.C. E.D. La. April 1968) the court said at page 341: "Bigness alone is not the evil. The Clayton Act's purpose is to thwart

mergers which tend to stifle competition, and to foster competition when it is needed. For these reasons, market shares, while undeniably important, do not tell the whole story. The law is geared to economics, not mathematics. The core question of the merger's probable effects on competition must be examined in light of all the pertinent economic factors of the particular market."

That this case is different from the prior litigated cases is clear from statements made in *United States* v. *Philadelphia National Bank, et. al.*, 374 U.S. 321, 370-371 (1963). When the Court turned to the justifications advanced by the defendant banks, it said the banks do not contend they are unable to expand without the merger. However, in the instant case Phillipsburg National and Second National do so contend. In *Philadelphia National* the Supreme Court said that it was not a case where two small firms in a market propose to merge in order to be able to compete more successfully with the leading firms in the market. However, Phillipsburg National and Second National are indeed two small banks desiring to merge to be better able to compete in the market place.[6] In *Philadelphia Na-*

[6] Legislation recently enacted by the Senate and General Assembly of the State of New Jersey will permit the large banks in Newark to branch into Warren County. The merger of Phillipsburg National and Second National would seem a must in order to compete with such potential competition.

In *Brown Shoe Co.* v. *United States*, 370 U.S. at 294 the Court said:

> . . . Congress foresaw that the merger of two large companies or a large and a small company might violate the Clayton Act *while the merger of two small companies might not, although the share of the market foreclosed be identical, if the purpose of the small companies is to compete with larger corporations dominating the market.* (*Emphasis supplied*)

tional the Supreme Court said that it was not a case in which lack of adequate banking facilities were causing hardships to individuals or businesses in the community. However, it is strongly contended in the instant case that lack of adequate banking facilities are causing hardships both to individuals and businesses in the community.

In *Philadelphia National* the Supreme Court stated further, among other things, that it was not a case where the banks were undercapitalized; or where management was a problem; or where ruinous competition was in the offing. However, in the instant case, the two defendant banks do need capitalization to move forward; there are serious management problems, especially so with Second National. These banks individually will be unable to be effective competitors and unable to serve their community. There are serious doubts these banks will be able to make a go of it in today's market.

In addition, the legislation recently passed by the Senate and General Assembly of the State of New Jersey, permitting merging and branch banking in three defined banking districts as opposed to county only, brings competition that will be ruinous to Phillipsburg National and Second National if they should remain separate entities. These two small banks are now in the first banking district, a seven county district, in which the largest banks in the state are located. Four of these large banks have deposits in excess of $500,000,000. In the first banking district, Phillipsburg National ranks 44th with .37% of total district deposits, and Second National ranks 58th with .24% total district deposits. (IX-30, A. 868-70, A. 581).

Since one of the purposes of the antitrust laws is to foster competition where needed, it is obvious that more competition and more and better services are needed in Warren County, the first banking district and the geographic area selected by the District Court. The record is replete with needs in the area for trust services, commercial and industrial lending, larger lending limits, business advice, etc. These two banks cannot and will never be able to compete in the area and especially in the new first banking district, unless they can grow. This merger is their answer to start to grow and give aggressive competition to the large banks now moving in and to supply desperately needed services. The only other answer for these two banks separately is to eventually merge with the large Newark banks, which banks will only get larger and absorb more of the State's banking resources. A merger of these two banks will be a real step toward competition, and better services. This certainly is the aim of the antitrust laws.

Product Market or Line of Commerce

Responding to Appellant's first question, the District Court did not erroneously reject commercial banking as a relevant product market or line of commerce. Instead it followed a series of cases not appealed by appellant, which have rejected commercial banking as a separate and distinct line of commerce. *United States* v. *Crocker-Anglo National Bank, et al.* 277 F. Supp. 133 (D.C. N.D. Cal. 1967), which was decided by a three judge District Court; *United States* v. *Provident National Bank*, et al. 280 F. Supp. 1, (D.C. E.D. Pa. 1968), *United States* v. *First National Bank of Jackson* et al., 301 F. Supp. 1161 (D.C. S.D. Miss. 1969); and *United States* v. *First National Bank of Maryland* et al., 1970 Trade Cases Par. 73061.

Since the passage of the Bank Merger Act of 1966, 12 U.S.C. 1828(c), this question was raised before the Supreme Court on appeal of *United States* v. *First City National Bank,* et al. 386 U.S. 361 (1967) and was specifically left open. Also, in *United States* v. *Third National Bank in Nashville,* 390 U.S. 171 (1968) where commercial banking merely was mentioned in a footnote (p. 182).

However, the three judge District Court in deciding *United States* v. *Crocker-Anglo National Bank,* 277 F. Supp. 133 (D.C. N.D. Cal. 1967) stated (p. 153-4) it was their opinion that "commercial banking" was not the sole line of commerce to be considered. The court should consider the totality of financial activities carried on by commercial banks and their competition. After discussing the omission of the phrase "line of commerce" from BMA-66 (U.S.C. § 1828(c)(5)(b)) and the comments made by the legislators during the considerations and passage of said Act, the three judge court stated on page 157:

> "The court having concluded that the intent of Congress in deleting the phrase "line of commerce" from the Bank Merger Act of 1966 was to permit an assessment of the competitive effect of a merger, not in the narrow market consisting solely of commercial banks, but in the wider and more realistic field of all institutions which compete either for the savings or investment dollar or for the extension of credit, now reviews this wider field."

The court in *Crocker* considered such other financial institutions as savings and loan associations; finance companies; both small loan and automobile loan companies, credit unions; the Division of Farm and Home

Purchases of The California Department of Veterans Affairs; insurance companies; the numerous offices of the Morris Plan Company; U.S. Savings Bonds; Postal Savings; Mutual Funds; Government Securities; credit cards; other Governmental agencies and, individuals and others.

In Chief Judge Clary's opinion in *United States* v. *Provident National Bank, et al.*, 280 F. Supp. 1, (D.C. E.D. Pa. 1968) he stated (pp. 7-8) he was persuaded by Judge Zirpoli's lucid analysis of the product market in the *Crocker* case. Judge Clary extended the line of commerce to include mutual savings banks, which were quite large in Philadelphia, and savings and loan institutions in considering competition for the dollar. He did not consider finance companies as competitors because they derived much of their lendable funds from commercial banks. Intervenor does not agree with this conclusion of the court, especially in view of the fact the important finance companies today get practically all their borrowed funds from commercial paper.

There is ample evidence in the record of this case to prove competition with commercial banks for the savings dollar by savings and loan institutions; mutual funds; pension plans; Government securities and bonds; insurance companies; stockbrokers; corporate bonds and notes; and, credit unions. On the credit or loan side there is ample evidence to prove competition by savings and loan associations; mutual savings banks; life insurance companies; small loan companies; automobile finance companies; credit unions; and Government agencies in the mortgage field. Also there has been shown to be substantial competition from Philadelphia and Newark banks in both the savings and lending areas as well as in trust business.

Not only did the Intervenor and defendant banks witnesses supply a wealth of evidence to support the contention that other financial institutions and commercial banks competed for the same customers, but *plaintiff's own witnesses admitted such competition.*

The Appellant contends that the demand deposit—unique to commercial banks[7] insofar as it is the principal medium for the transfer of funds—so insulates these principal functions of commercial banks from the normal effects of competition that we may consider all of these items as one big line of commerce in a geographic market associated with any of them largely independent in all their ramifications from any non-commercial bank competition. We believe that this proposition is, demonstrably, arrant nonsense. The transfer function is, we concede, relatively unique and warrants treatment as a separate line of commerce. But only in this single respect may we examine the competitive effects of a proposed bank merger in isolation from other financial institutions. The effect of the proposed merger on the nature, kind and quality of competition in transferring funds is all we concede is insulated. If examination proves this kind of activity to be relatively non-competitive, relatively immune to effects of change in the number of suppliers, then the effects of the merger *in that line of commerce* must be measured by different standards than would govern something more volatile like the market for savings dollars. There, of course, the universe (the total num-

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[7] Demand deposits are unique to commercial banks generally speaking, but in New Jersey Savings Banks can and do accept demand deposits. This is also true in the State of Maryland. In other States Savings Banks and Savings & Loan Associations are pushing for legislation to permit them to accept demand deposits.

ber of competitors) is much larger than commercial banks alone and the effect of the merger must be measured in that greater context.

To say commercial banks and its various functions obtain the status of uniqueness because the accept demand deposits would give a result of "the tail wagging the dog."

Appellant also contends commerical banks are unique because they create money through demand deposits. A commercial bank while it gives credit because of a deposit cannot by itself increase the money supply. This can only happen with the aid of the whole banking system.[8]

The creation of money *per se* does not give commercial banks a competitive advantage in any of the product and service markets in which they compete. Commercial banks can create money only by making loans. In the search for credit worthy borrowers they face competition from a wide variety of other financial institutions such as other commercial banks, mutual savings banks, savings and loan associations, credit unions, sales finance companies, insurance, the substantial government credit agencies and so forth. Hence, even if commercial banks in New Jersey were unique, that particular uniqueness would be irrelevant in the assessment of the competitive effects of the merger.

The primary function of a bank is to receive money and to extend credit. It receives money for safekeeping and for savings, a form of investment, and lends money to borrowers. It is organized to serve the public

[8] Economics, An Introductory Analysis, by Paul A. Samuelson, Professor of Economics, Massachusetts Institute of Technology, 1958, Fourth Ed.

and to make a profit. It is not organized for the purpose of creating money, this is an indirect result, aided by the banking system as a whole, of lending money deposited at a bank. This creation of money has nothing to do with competition or more specifically the competitive effect of this merger. Nor does it make all functions of the bank unique. These functions are separate and distinct from the creation of money.

Appellant places much reliance upon the unique congeries of services offered by commercial banks. Appellee Intervenor denies the relevance of any representation that no other financial institution duplicates the precise combination of services offered by commercial banks. In the science of semantics, words are meant to differentiate, to particularize concepts. If another kind of financial institution offered the same congeries of services as does a commercial bank it would not be another kind of financial institution, it would be a commercial bank. By the same token, a commercial bank is not a life insurance company because it offers a different combination of services—it is something else. But that the combinations are different does not mean that the different financial institutions do not compete in particular functions. A credit union competes with, *inter alia,* commercial banks for savings dollars and for consumer loans. This is a truth. This truth is not lessened in any way by the fact that a credit union is not a medium for the transfer of funds nor, usually, a data processing service organization. But the Clayton Act was not directed toward *combinations* of services. What *combinations* are duplicated or unduplicated are irrelevant. The Clayton Act concerns itself with *competition.* The issues in this suit relate to whether banks *compete* with other institutions in the offering of serv-

ices, service by service, and line of commerce by line of commerce.[9]

Appellee Intervenor denies that "Commercial Banking" is *the* relevant line of commerce in this case. A line of commerce, we take to mean a kind of business activity in which the products or services are functionally interchangeable—i. e., can be used for the same purpose, in which purchasers are willing to substitute one for the other. "If price changes of one product affect the sales of another, such responsiveness is indicative of the competition of the products" (*U. S.* v. *Charles Pfizer & Co.*, 246 F. Supp. 464, 468, (E.D.N.Y. 1965)). Is there "cross-elasticity of demand between products," in the words of the Supreme Court. (*U. S.* v. *E. I. du Pont de Nemours & Co.*, 351 U.S. 377, 1956.) As the Court pointed out in *Cellophane, supra,* Plaintiff bears the burden of establishing its product market, a factual conclusion which is established neither by an *ipse dixit* in the Complaint nor by reference to fact findings in other cases. Commercial banking is not a product or a service, it is a combination of products and services, each of which forms portions of disparate lines of commerce. The competitive effect of this merger must be tested by Plaintiff in each such market and violation alleged as to that line or those lines where competition is or would be substantially lessened. It is a bootstrap operation pure and simple to say that commercial banking is unique and therefore any normal business activity—say, lending—engaged in by commercial banks is insulated from competition with other lenders.

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[9] Note, for example, the language of the Supreme Court in *United States* v. *Continental Can Company*, 347 U.S. 441.

Appellant relies exclusively on this issue upon the *Philadelphia National Bank*[10] case which was followed in *Nashville*[11] where the District Courts had found commercial banking to be the appropriate "line of commerce" and in which finding the Supreme Court concurred. The validity of the conclusion there reached on this question must be viewed in light of the fact that Chief Judge Clarey of the Eastern District of Pennsylvania who had made the initial ruling that commercial banking was a "line of commerce" in *Philadelphia*[12] took precisely the opposite view on a more complete factual record, relative to competition between commercial banks and other financial institutions, in *Provident.*[13]

In all, subsequent to the selection by the Supreme Court of "commercial banking" as a line of commerce in the *Philadelphia National Bank* case, five separate and distinguished Courts[14] have rejected this factual conclusion, all of which is in accord with the statement made by Senator Robertson, just prior to the passage of BMA-66, in response to a question by Senator Long

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[10] *United States* v. *Philadelphia National Bank et al.*, 374 U.S. 361 (1964).

[11] *United States* v. *Third National Bank in Nashville* et al., 390, U.S. 171 (1968).

[12] 201 F Supp. 348, 361 (E.D. Pa. 1962).

[13] *United States* v. *Provident National Bank*, 280 F Supp. (E.D. Pa. 1968).

[14] *U. S.* v. *Crocker-Anglo National Bank*, et al., *supra*; *U. S.* v. *Provident National Bank*, et al., *supra*; *U. S.* v. *First National Bank of Jackson*, et al., *supra*; *U. S.* v. *Phillipsburg National Bank & Trust Co.*, et al., *supra* (the case before this Court); and *U. S.* v. *First National Bank of Maryland*, et al., *supra*.

on this very question. The question and answer was as follows (112 Cong. Rec. 2-9-66, p. 2664):

> "Mr. LONG of Missouri. In determining whether a proposed merger tends to lessen competition does the bill contemplate that only competition among commercial banks is to be considered?
>
> Mr. ROBERTSON. No; that would be entirely unrealistic. At the present time the banking agencies consider as relevant the competition afforded to commercial banks by other financial institutions, for example, savings and loan associations, credit unions, insurance companies, mutual savings banks, and small loan companies. Such financial institutions compete with commercial banks and the effect of this competition must be considered by the agencies and by the courts when a proposed merger of commercial banks is being questioned."

Relevant Geographic Area

Appellant cites at length and frequently in its brief that the *Philadelphia National* case, *supra,* is controlling for judging an appropriate geographic market. In said case the Supreme Court found the appropriate geographic area to be Philadelphia and the three contiguous counties within which Philadelphia banks were permitted to branch. Such ruling, being a decision on questions of fact, is not binding on us in this case. While the rules of *stare decisis* bind us, until reversed, to the Supreme Court's legal opinion on the issue of "section of the country", "the doctrine of *stare decisis* does not ordinarily apply to decisions on questions of fact so as to render them binding in later cases, although they may be advisory." [15] In *Quon* v. *Niagara Fire Insurance Company of New York,* 190 F. 2nd 257-

[15] Corpus Juris Secundum, Courts § 212.

269 (1951), the proposition was expressed "But the judgment of fact of one court on a particular record cannot bind another court, or even the same court, to make a similar finding on a different record." Thus, Intervenor contends this court is not bound to the factual application of that conclusion under the different factual record which has been developed here in delineating the so-called "section of the country" or "trading area." However, if the court followed the ruling in *Philadelphia National, supra,* the geographical area would be much greater than that decided by the District Court.[16]

A trading area is not determined by an arbitrary selection of a geographic area most conducive to a high concentration figure. Such an area is determined by the economic realities of the market place not by mathematics. Of prime importance in selecting a geographic area is the nature of the community or area to be served. The community to be served involved in the instant case is not a highly concentrated commercial area, in an urban area, such as has been involved in other litigated cases. Normally a rural area com-

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[16] If this were the rule for this case, since the Justice Department has selected Easton & Phillipsburg and their environs as the "section of the country" then must we not also include Warren County, N.J., where Phillipsburg banks can branch and Bucks, Lehigh, Northampton, Carbon and Monroe counties in Pennsylvania where banks in Easton can branch. Such inclusion would indeed make the merger insignificant. Also, since recently enacted legislation permits banks in Warren, Essex, Bergen, Hudson, Morris, Passaic and Sussex counties to branch in each mentioned county, shouldn't all banks in these counties be included in the geographical area. (Actually, the latter area with portions of Pennsylvania selected by the District is more realistic, or even the first banking district. However, in selecting only the first banking district it is difficult not to include Easton and environs.)

posed of farmlands, residences, it is now growing as an industrial and commercial area. There are a few small urban areas readily accessible to all within the area.[17] It is an area where people will travel an approximate radius of 25 miles to work, to shop, to bank and to conduct other types of business. Such travel is made easy by today's modern mode of transportation and the many roads and super highways. It is an area where it is as normal for people to travel by car, the distances mentioned, to shop, work and bank as it is for large city dwellers to travel by public transportation or car to shop or work in confined and congested metropolitan area. Actually the time consumed to travel by car in trading areas here involved may indeed be less than that required for such travel in the large cities of our country, although the distances to be traveled may be shorter.

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[17] Intervenor, during trial, alleged two trading areas. Trading Area A and alternative Trading Area B as alternative area. Trading Area A, which conforms to defendant bank's trading area, is: all of Warren County, New Jersey, the northwestern portion of Hunterdon County, New Jersey (Alexandria Township, Bethlehem Township, Bloomsburg Borough, Clinton Town, Clinton Township, Franklin Township, Frenchtown Borough, Glen Gardner Borough, Hampton Borough, High Bridge Borough, Holland Township, Kingwood Township, Lebanon Borough, Milford Borough, Raritan Township and Union Township), all of Northampton County, Pennsylvania, all of Lehigh County, Pennsylvania, and that portion of Buck's County Pennsylvania within 15 miles of the Town of Phillipsburg, New Jersey. Trading Area B—all of Warren County, New Jersey; Northampton County, Pennsylvania, Allentown, Pennsylvania; and the northwest corner of Hunterdon County, New Jersey (Alexandria Township, Bethlehem Township, Bloomsburg Borough, Clinton Town, Clinton Township, Franklin Township, Frenchtown Borough, Glen Gardner Borough, Hampton Borough, High Bridge Borough, Holland Township, Kingwood Township, Lebanon Borough, Milford Borough, Raritan Township and Union Township), and that portion of Buck's County, Pennsylvania within 15 miles of the Town of Phillipsburg, N.J.

It has been proven that area selected by the District Court is an appropriate area, and that all banks within the area are accessible to all persons and businesses within the area. Some banks within the area are not too aggressive and are satisfied with present business confined to a small area, others are aggressive and seek business throughout the area. The fact that some banks are complacent and do not seek additional business in the area, doesn't limit the relevant geographic or trading area. Phillipsburg National proved the area to be larger than Easton-Phillipsburg when it hired a consumer loan specialist. This specialist generated substantial consumer loans in Lehigh County and Allentown and Bethlehem, but was forced to cut back due to lack of funds. The Allentown-Bethlehem areas were cut off. (A. 410).

A number of other businessmen, such as, automobile dealers, contractors, a television sales and service dealer, and a food and department store owner, testified that they considered the trading area to be within a radius of 25-30 miles of Phillipsburg. The Director of Advertising from the Easton Express stated the paper's circulation was primarily within a 20 mile radius. The paper covered the eastern portion of Northampton County, Pa., and was the dominant newspaper in Warren and Hunterdon Counties, New Jersey. The Lehigh Northampton Joint County Planning Commission considered Lehigh, and Northampton Counties in Pennsylvania, and Warren County in New Jersey as an integrated trade area.

There was testimony that the Standard Metropolitan Statistical Area (SMSA) was the appropriate trading area and it was used by National Advertisers and other businesses in marketing their products. Prudential Life, making an independent analysis of the area in an

effort to ascertain the proper trading area for its purposes, determined the trading area to be identical with the ABE-SMSA selected by the U.S. Bureau of the Census.

The distances people daily travel from their places of residence to work is another important factor supporting a 25-30 mile radius from Phillipsburg as the socio-economic area for this case.

Banks in Easton, and Bethlehem and Nazareth devote some of their energies to soliciting business in Phillipsburg. The defendant banks do business in all counties in the District Court's geographic area. The Felmington National Bank in Hunterdon County competes with the banks in Phillipsburg as do many other banks in Warren County. The First National Bank of Milford, N. J., (app. 14 miles south of Phillipsburg) advertised in the Easton Express "Don't let a few miles stand between us."

There was, of course, an abundance of testimony to the effect that the Girard Trust Co., branch located in Reigelsville, Pa., which is in the northeast corner of Bucks County, competed vigorously throughout the District Court's geographic area. Practically all banks in said trading area complained of losing business to the Girard branch in Reigelsville. In fact the Reigelsville branch of Girard Trust derived almost one-third of its business from Phillipsburg-Easton and environs. Girard Trust's own survey shows extensive competition throughout the District Court's trading area.

The District Court considered all the evidence in the case and then made its determination of the relevant geographic area stating

> "... it would be expected that a higher percentage of deposits and loans would be derived from a

> heavily populated area of the market than from one that was sparsely populated. But that circumstance would not be a valid reason for moving the small town out of the relevant market. If the ratio of business on a per capita basis were the same or comparable, the small town belongs in the market. Any other approach would exclude most of the suburban areas. Moreover, even if little or no business is presently derived from a particular locality, if there is convenient ease of access to the market, the potential use as a satisfactory, convenient alternate choice should be considered.

This Court in *Philadelphia National,* did not confine the determination of a geographic area to where the effect on competition will be direct and immediate, but continued a discussion of the matter and stated by quoting for emphasis the test in *Tampa Electric Co.* v. *Nashville Coal Company,* 365 U.S. 320, 327, as follows p. 359

> . . . the area of effective competition in the know line of commerce must be charted by careful selection of the market area in which the seller operates, *and to which the purchaser can practically turn for supplies* (Emphasis by this Court.)

Case Moot by Virtue of New Jersey Banking Laws

Irrespective of whether the District Court was right or wrong in its determination of the relevant geographic area and the product market, the amendment to the New Jersey Banking Law created a new geographic area.

This new law has divided the state into three banking districts for the purpose of merger and branching. Prior to the new Act such activity by a bank was confined to the County in which the bank was located. As

a result, Phillipsburg National and Second National are now in the first banking district, which consists of seven counties, namely, Essex, Hudson, Bergen, Passaic, Morris, Sussex, and Warren. The largest banks in the state are located in this district. The four largest have deposits in excess of $500 million; the next four have deposits in excess of $300 million; and the next eleven have deposits in excess of $100 million. Phillipsburg National ranks 44th and Second National 58th in this district. If the merger is consummated they will rank 26th in the district. (IX-30, A. 868-70, A. 581).

The new law has created a new geographic area for Phillipsburg National and Second National must now compete with all commercial banks[18] in the first banking district. Already large and substantial banks have begun to move into Warren County and the other counties in the district either by merger or by branching. (IX-30, A. 866-78, A. 581; IX-31, A. 894, A. 581).

The competitive report of the Department of Justice submitted to the Comptroller of the Currency in connection with the merger of Washington Trust Company of Warren County into the National Newark and Essex Bank, Newark, N. J., a bank with deposits about $580 million, fully recognized the significant changes the new law had produced and advised the merger would have no significant effect on existing and potential competition. It stated that "the recent broadening of the geographic boundaries of permissible branch office operations by commercial banks in New Jersey has induced substantial market activity both by *de novo* branching and by merger." The competitive report

[18] The Act also applies to savings banks and building and loan associations. (N.J. Stat Ann. § 17:12B-26)

stated in conclusion (p. 4): "Therefore, this acquisition of one of the smallest banks (deposits of over $16 million) in the First Banking District does not seem likely to have a significantly adverse effect on potential competition." The competitive report by the Board of Governors of the Federal Reserve Board (p. 2) on the same merger also recognized the change which the new law had produced and reached the conclusion the merger would have no adverse effects. (IX-30, A. 866, A. 581).

It is obvious that now the merger of Phillipsburg National and Second National must be considered in the light of the new New Jersey banking law which has put it in the first banking district for merging and branching. This is the geographic area in which all banks headquartered in the seven counties included therein may merge or branch. This is the smallest relevant geographic area for the purposes of this merger.[19] In the *Philadelphia National* case, *supra,* this Court said (p. 361)

> "We think that the four-county Philadelphia metropolitan area, which state law apparently recognizes as a meaningful banking community in allowing Philadelphia banks to branch within it, and which would seem roughly to delineate the area in which bank customers that are neither very large nor very small find it practical to do their banking business, is a more appropriate "section of the country" in which to appraise the instant merger than any larger or smaller or different area."

As the statistics in this case show there are approximately 87 commercial banks in the first bank district

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[19] Because Easton and Phillipsburg have been so closely associated economically and socially for practically the last century, Easton and environs can indeed be a part of the geographic area.

and the largest banks in the State are in said district. Phillipsburg National and Second National are practically midgets among giants. The merger in terms of concentration of banking assets, deposits, loans or any other criteria is totally meaningless. (Yet to these two banks it is a matter of life or death and will be procompetitive and beneficial to the community).

Since the new New Jersey banking law has created the first banking district, which the State obviously recognizes as a meaningful banking community, the competitive effect of the merger of these two small banks is *de minimus,* if indeed, there is any effect. However, the real effect of the new law is to make this merger case moot. This case was tried prior to the passage of the new law and under the standards of the old law.

As the effect of the new New Jersey banking law is to make this case moot, the opinion of the District Court permitting the merger *because of no anti-competitive effect* should be affirmed. Affirming the District Court on these grounds makes consideration of Appellants questions III and IV unnecessary. These two questions are to be considered only if the Court finds anti-competitive effects. See *United States* v. *First City National Bank of Houston,* et al. 386 U.S. 361, 365 (1967); *United States* v. *Third National Bank of Nashville,* et al, 390 U.S. 171, 184 (1968).

Appellant's Geographic Areas Not Sections of the Country

Appellee Intervenor contends the geographic areas alleged by Appellant are not "sections of the country." Appellant alleged Easton, and Phillipsburg as the relevant geographic area, and now Phillipsburg as a submarket.

Certainly Phillipsburg, New Jersey, which has had no population change for over 15 years, has no land available for development, (T 825) and has such a limited variety of goods offered by its stores that one cannot purchase a man's suit of clothes there, (T 894; 1348) cannot by any stretch of the imagination be considered a "section of the country", or an "economically significant market" within the meaning of Section 7 of the Clayton Act.

As enacted in 1914, Section 7 of the Clayton Act read in pertinent part "or to restrain such commerce in *any section or community. . . .*" When the Section was amended in 1950 by the Celler-Kefauver Act to bring asset acquisitions within the purview of the statute, the term "section or community," *inter alia,* was changed to its present language. In his landmark opinion in *Brown Shoe Company* v. *United States,* 370 U.S. 294 (1962)—the first major examination of the Celler-Kefauver Act—Chief Justice Warren noted that:

> The deletion of the word 'community' in the original Act's description of the relevant geographic market is another illustration of Congress' desire to indicate that its concern was with the adverse effects of a given merger on competition only in an *economically significant* 'section' of the country. (Id. at p. 320)

He added later that:

> The 1950 amendments made plain Congress' intent that the validity of (mergers) was to be gauged on a broader scale; their effect on competition generally *in an economically significant market.* (p. 335)

These understandings formed the rationale for his conclusion that:

> The geographic market selected must, therefore, both 'correspond to the commercial realities' and *be economically significant.* Thus, although the geographic market in some instances may encompass the entire Nation, under other circumstances it may be as small as a single metropolitan area. (Id. at pp. 336-7) (Emphasis supplied throughout.)

This approach was confirmed by Mr. Justice Brennan in the *Philadelphia National Bank* case when he noted defendant's concession that the Philadelphia area (population 2 million plus) had "sufficient commercial *importance* to qualify under *Brown Shoe Co.* . . . as a 'section of the country' within the meaning of § 7" (374 U.S. 321, 359 (1963). (Emphasis added.)

The latest population figure for Phillipsburg Township as of July 1, 1969 was 18,510. (IX-30, A. 883, A. 581). For the country the population figure for 1960 was about 200,000,000.[20] Commercial bank deposits in Phillipsburg, as of June 30, 1969, were $57 million, (IX-30, A. 868-70, A. 581) while commercial bank deposits for the country for 1960 were $230,532,000,000[21] and for the country for 1968, $437,489,000,000.[22] These numbers would not appear to support a conclusion that Phillipsburg is an "economically significant market" of "sufficient commercial importance" to be a "section of the country" under the criteria set forth by the

[20] 1960 Census of Population, Vol. I p. S16.

[21] 1960 Annual Report of Federal Deposit Insurance Corp., p. 143.

[22] 1968 Annual Report of Federal Deposit Insurance Corp., p. 185.

Supreme Court. Furthermore, unlike, Philadelphia, Phillipsburg is not a "metropolitan area" either in population or in economic strength. Even conceding for the sake of argument that Chief Justice Warren's definition of "as small as a metropolitan area" meant "as small as the smallest metropolitan area." Phillipsburg still falls well outside the lowest parameter. The smallest metropolitan area in the United States as of January 1, 1968, was Midland, Texas, with a population of 68 thousand and with bank receipts of $208,535,000.

During the Senate Hearings on the Celler-Kefauver Act, Senator Donnell, the principal opponent of the Act, and Congressman Celler, its author, and witnesses from the Federal Trade Commission deleted the various provisions of the Act and came to an understanding that it was not designed to reach small communities and their surrounding territories. Communities mentioned as not being "sections of the country" were Oshkosh, Wisconsin, with a population in 1950 of 91,103; Tallahassee, Florida, with population in 1950 of 51,590; and Dothan, Alabama, with a population in 1950 of 46,522.

It appears conclusive that Phillipsburg, New Jersey has not the "commercial importance" or the "economic significance" to be a "section of the country" within the intendment of the framers of the statute as interpreted either by them or by the Supreme Court. To say this is not to abandon antitrust inquiry into essentially local markets. Presuming the existence of interstate commerce, the Department of Justice may always inquire under the somewhat stricter standards of Sections 1 and 2 of the Sherman Act.[23] Nor is inquiry

[23] 12 U.S.C. § 1 and 2.

precluded into the acquisition of a bank which does business only in a single county or city if the merger is alleged to have substantially anticompetitive effects in some acceptably significant "section of the country." But Appellee Intervenor rejects the *reductio ad absurdum* which would conceive as "economically significant" or of "commercial importance" a so-called market as Phillipsburg, New Jersey.

Likewise, the Easton-Phillipsburg area should not be considered a "section of the country." Easton, Pennsylvania with a population of 31,955 in 1960 has had a decrease in population from a figure of 35,632 in 1950, and a figure of 33,589 in 1940.[24] The cities or townships of Easton and Phillipsburg together had a total population in 1960 of 50,465. The total deposits of the two combined amounted to about $158 million.

The largest bank in the geographic area selected by the District Court, First National Bank & Trust, Bethlehem, Penn., had deposits of $102,898,000. The total deposits of all commercial banks in the District Court's geographic area were $542,181,000. (306 F. Supp. 645, 657-8).

Standards Applied by District Court in Assessing and Weighing the Convenience and Needs of the Community Was Not Erroneous

It must be pointed out at this point that Appellant does not refute the District Court's ruling that there are serious and important convenience and needs to be met and that the merger will help bring these benefits in the public interest. Nor does Appellant disagree with the ruling that if the gains in better services outweigh the anticompetitive effects and the necessity of

[24] 1960 Census of Population, Vol. 1, Chap. 40-34.

the merger to secure the net gain in the public interest,[25] the merger should be approved, as was stated in the *Third National Bank in Nashville* case, *supra*, p. 189. Appellant contends the District Court applied erroneous standards in weighing the convenience and needs against anticompetitive effects and that the convenience and needs to be derived from the merger cannot apply to a narrower area than that which the District Court selected as the relevant geographic area *in which to assess any anticompetitive effects of the merger*, but must apply to that whole relevant geographic area.

Appellant contends the District Court must necessarily come to a proper conclusion as to the anticompetitive effects before it can properly apply the convenience and needs factors against the anticompetitive effects. This is clearly an erroneous contention. It has long been recognized that legal problems and factual situations can be considered in the alternative. Appellee Intervenor believes the District Court came to a proper conclusion as to the anticompetitive effects. But, assuming the District Court did not come to a correct conclusion, said Court can still assume the anticompetitive effects as alleged[25a] and then properly weigh the convenience and needs against such anticompetitive effects. Appellee Intervenor believes such a fact does not even need stating but feels compelled to do so because Appellant contends to the contrary.

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[25] See also, Northern Lines Case, *United States* v. *Interstate Commerce Commission*, et al., 396 U.S. 491, 514-515, (1970).

[25a] The district court did assume all anticompetitive effects alleged by plaintiff when it said (A 699) "The Court finds that there is a preponderance of evidence showing that any conceivable anticompetitive effect of the merger is clearly outweighed . . ." There is no doubt that the Court meant by the expression "any conceivable anticompetitive effect" any anticompetitive effect the plaintiff had alleged.

The District Court did properly weigh the convenience and needs against the anticompetitive effects. The District Court went to great lengths to specifically show what was needed in the community to be served, who needed it and how these convenience and needs would be furnished by the merger and to whom. (A. 689-699). Approximately ⅓ of the District Court's opinion was devoted to the weighing process. The District Court had a plethora of evidence proving the need for a bigger bank; trust services, with a fulltime trust officer; commercial and industrial lending specialist; mortgage lending specialist; higher lending limit; better services; new competent management personnel; and of great importance a more competitive bank (See Appellee Intervenor's Statement of Facts pp. 20-31 of this brief).

The District Court assumed all the anticompetitive effects alleged by plaintiff and then elaborately and carefully weighed the convenience and needs against such anticompetitive effects. A very proper weighing test was done by the District Court and its conclusion was more than adequately supported by evidence introduced at the trial. What more can be done?

Appellant's contention that community convenience and needs should be evaluated in the same geographic area as the competitive effect is clearly not correct, nor does the Bank Merger Act of 1966[26] so state.

The applicable portion of the BMA-66 reads:

> (c)(5) The responsible agency shall not approve—
>
> (B) any other proposed merger transaction whose effect in any section of the country may be sub-

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[26] Public Law 89-356, 64 Stat. 892, 12 USC § 1828(c).

> stantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

It is obvious from a reading of this applicable portion of the statute that the competitive effects are to be assessed in a "section of the country" while the convenience and needs which must be weighed in the public interest against the anticompetitive effects apply to "the community to be served" which may be a smaller community than the section of the country for competitive effects or even a larger community, and, of course it can also be the same as the area determined to be the section of the country.

The important point which apparently Appellant has missed is whether the convenience and needs outweigh the anticompetitive effects. The community to be benefited can be larger or smaller than the "section of the country" as long as the convenience and needs in the public interest outweigh the anticompetitive effects. There is no doubt this is the proper interpretation to be used in weighing the convenience and needs in the public interest.

This position is supported by explanatory remarks of various Congressmen, whether for or against the Act. (See 112 Cong. Rec. 2-8-66 p. 2456-7, 112 Cong. Rec. 2-9-66 p. 2663; House Report 1173 p. 3). In answer to a question by Senator Long, Senator Robertson stated: (112 Cong. Rec. 2-9-66 p. 2663)

> "The bill makes clear that while the anticompetitive effects of a proposed merger are to have

great weight, the probable effects of the merger on the public interest are to be controlling. Thus any particular community may have a banking need which can be supplied by the merged institution, the fulfilling of which may be so beneficial to the public interest that it outweighs any anti-competitive effect of the merger.

Mr. LONG of Missouri. What area is encompassed by the term "community to be served" in the bill?

Mr. ROBERTSON. This means the entire area to which services are or could be supplied by the proposed merged institution, and such area is of course not limited by city, county, or State geographical boundaries. As I have said earlier, the emphasis here should properly be on the words "to be served." A big New York bank serves local customers in New York, and it serves the big nationwide industrial firms across the country and around the world. Artificial boundary lines, branching areas limited in one way or another by the different States have little or no significance.

In *First National Bank of Jackson, supra,* it had been agreed and stipulated by all parties that the relevant geographic area in which to assess the anticompetitive effects was Leflore County. Nevertheless, Judge Nixon held, in addition to benefits to Leflore County, that there would be substantial benefits from the merger to the Mississippi Delta area which embraces several counties, (p. 1222) and benefits from the merger to the whole State of Mississippi (p. 1224). Judge Nixon held the convenience and needs to result from the merger clearly outweighed the anticompetitive effect of the merger in each of the three areas to be benefited by the merger. (p. 1227).

Appellant must indeed be grasping at straws in contending such a ruling was erroneous.

Appellant's Contention that the Merging Banks—and the District Court—Failed Adequately To Consider a Less Anticompetitive Alternative Is Not Supported by the Facts

The facts in this case show that Phillipsburg National and Second National need more capital. (T 559-560, 586, 598). Second National's ability to compete has been limited because of capital deficiency (R. 117 Daubert's deposition). Both banks are unable separately to pay the salaries needed to attract competent personnel. (A. 538; R. 1306; R. 134 Casteline deposition). There was an excess of evidence proving both banks' need for a full-time trust officer, a C&I specialist, a mortgage specialist, a larger lending limit, management personnel, and of great importance the need to be more competitive. (See pp. 20-31 of this brief). These two small banks' immediate problem is to become large enough to compete with the competition they are facing. They have gone as far as they can go separately and have reached the position where they are no longer competitive and must seek a way to fortify their competitive positions. (A. 383-384; 506; 650).

The prospects of Phillipsburg National and Second National are glum because of problems of personnel and management. Neither can "make it" without a merger. (A. 483-484; R. 133-134 Casteline deposition). Top management of both banks are old and want to retire, but there are no younger men in either of the banks to replace them. (See pp. 20-22; 31-33 of this briefs). Three officials of substantial banks testified there was no future for these two banks separately. (A. 154; 483; R. 133-134 Casteline deposition; see also pp. 33-34 of this brief).

In contending that alternatives were not seriously pursued Appellant states in its brief the only evidence of attempt to find qualified bank officers was a discussion by Second National with an officer of Chemical Bank of New York. This is absolutely false and shows a lack of knowledge of the record. (See pp. 31-32 of this brief).

The record is clear that Second National contacted William Greenley, Senior Vice-President of Fidelity Union Trust Co., Newark, N. J., which was a correspondent bank for Second National, and not only asked advice as to what it could do to correct its problems but also asked Mr. Greenley to find competent personnel (A. 151-154). For over a year constant attempts were made to find personnel to fill management positions. Competent personnel could not be found who were interested in locating in Phillipsburg. An assistant Vice-President at Fidelity Bank rode to Phillipsburg with Mr. Greenley on several occasions and looked the bank over, but he showed no interest. (A. 169-170).

During July 1967, Thomas Armstrong, a Director of Second National for fifteen years, spoke to a Robert Van Buren, a Vice-President for Chemical Bank of New York about coming to work for Second National and also asked for suggestions as to other persons who might be interested, but to no avail. Mr. Van Buren wanted a salary in excess of $30,000 per year, plus other commitments. (A. 406-407). A Mr. Seiss, another Director of Second National, as well as other members of the Board of Directors attempted continuously to locate and attract prospective management candidates, but were unsuccessful. (A. 406).

Efforts had been made by Phillipsburg National to obtain competent executives but without success (A.

264, 325; 649-650; R. 233-234 Curry deposition). The Directors of Phillipsburg National had almost weekly discussions on how and where they could find successor management. (A. 325). The President of Phillipsburg testified he had not gone out and tried to fill the management gaps because he knew the salaries this replacement personnel were asking and he knew the bank could not afford to pay such salaries (R. 233-234, Curry deposition).

What more could be expected? Certainly this recruitment activity is in line with this Court's ruling in the *Third National Bank of Nashville* case, *supra*, where it stated (p. 190):

> "The Act directs the agencies and the courts to consider managerial as well as financial resources in weighing a proposed merger. However, the Act requires as well that the 'future prospects of the existing and proposed institutions' be appraised. Part of such appraisal, where managerial deficiencies exist as they do in this case, is determining whether the merging bank is capable of obtaining its own improved management. *This test does not demand the impossible or the unreasonable.* It merely insists that before a merger injurious to the public interest is approved, a showing be made that the gain expected from the merger cannot reasonably be expected through other means." (Emphasis supplied).

The Senior Vice-President of Fidelity Union Trust Co. recommended to Second National that a merger with Phillipsburg National was the only way to solve their problems. (A. 154). The President of the Hunterdon County National Bank, Flemington, N. J., testified Phillipsburg National and Second National wouldn't have a chance if they remained separate banks. (A. 483). The President of an Allen-

town, Penn., bank said he would be "real worried" about the future of these two banks as separate entities. (R. 133-134, Casteline deposition).

Appellant suggests as an alternative "less anticompetitive" measure that these banks each merge with other banks. Is this "less anticompetitive?" These two small banks are attempting to solve their problems and become effective competitors in their area. With the change in the New Jersey Banking Law, their alternative is to each merge with large Newark banks, which are not only available, but sitting on their hands in the wings waiting to grab them. (IX-30, A. 866-878, A. 581). Is it "less anticompetitive" to have the largest banks in the state grow larger by acquiring the smaller banks, and eliminating two banks which are interested in being competitive? It is Appellee Intervenor's firm belief it is in the public interest and most pro-competitive to let these two small banks merge and grow to effectively give competition to the largest banks in the area. This is truly in keeping with the purpose of the antitrust laws.

SUMMARY AND CONCLUSION

The two banks involved in this merger, Phillipsburg National and Second National are small banks in absolute terms. They are so small they cannot compete in their area or give the community the needed banking services. They are hopelessly beset with management and personnel problems, lack of financial resources, and cannot serve the community which has caused hardships to business people in the community. They cannot grow separately, and thus need the merger. They cannot solve management and personnel problems without the merger. Not only could they not compete

with other banks at the time of the trial, but subsequent to the trial the New Jersey legislature passed an amendment to the New Jersey Banking Law which placed these two banks in the newly created first banking district, which consists of seven counties, namely, Essex, Hudson, Bergen, Passaic, Morris, Sussex and Warren. The new Act permits merging and branching district-wise as opposed to the old restriction of only county merging and branching. The largest banks in the State of New Jersey are located in this first banking district.

If these two small banks couldn't compete before, think of the problems now confronting them!

It is the Appellee Intervenor's firm belief that, irrespective of the fact these banks are located in the same city and a block away from each other; and irrespective of what the geographical area might be or what the product market or line of commerce might be, these two banks should be permitted to merge as it is a procompetitive merger, a merger of two small banks attempting to grow, to solve their problems, and to furnish sorely needed banking services. This is in accord with this Court's rulings in *United States* v. *Philadelphia National Bank* et al., 374 U.S. 370-371 (1963) and *Brown Shoe Co.* v. *United States,* 370 U.S. 294 (1962).

These two banks will be unable to make a go of it separately. If they do not merge the only salvation is merger with the large Newark banks. This would only mean greater concentration of bank resources in the hands of the larger banks and the elimination of two small banks. As a result of the New Jersey Banking Act the large banks have already started to merger

and branch district-wise. To allow this to happen and to prevent this merger would be directly opposite to the purpose of the antitrust laws which is to foster competition. These two small banks should be given the opportunity to grow and become a competitive factor in their immediate area and in the first banking district of New Jersey.

The District Court's ruling on the product market or relevant line of commerce was correct. After this Court's ruling in the *Philadelphia National Bank* case, *supra,* Congress has passed the Bank Merger Act of 1966 (BMA-66) which intended the banking agencies and Courts to consider the competition of other financial institutions in determining the proper line of commerce. Since the *Philadelphia National Bank* case, *supra,* and the passage of BMA-66, five distinguished District Courts have rejected Appellant's contention that "commercial banking" is unique and separate line of commerce. All considered the competition of other financial institutions in determining the proper product market or line of commerce.[27]

The fact that commercial banks issue checks and no other financial institutions to any great degree issue checks, does not in and of itself give a unique and separate status to all other functions of a bank which compete vigorously with other financial institutions. This one function, acceptance of demand deposits, does not make all functions a unique combination. One must face the facts of life as to competition. There are many other institutions, including the U.S. Govern-

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[27] *U. S.* v. *Crocker-Anglo National Bank,* et al., *supra; U. S.* v. *Provident National Bank,* et al., *supra; U. S.* v. *First National Bank Jackson,* et al., *supra; U. S.* v. *Phillipsburg National Bank & Trust Co.,* et al. (the case before this Court); and *U. S.* v. *First National Bank of Maryland, supra.*

ment, competing for the savings dollar; and many other institutions competing in the credit field.

As to Appellant's contention the District Court erred in applying convenience and needs to a narrower geographic area than the geographic area selected by the Court as relevant to this case, Appellee Intervenor believes Appellant is desperately seeking for a way out by contending the convenience and needs of the community to be served must relate to a geographical area identical to the one the court selected in evaluating the anticompetitive effects of the merger. The applicable portion of BMA-66 does not so state.[28] All the statute requires in the weighing test of convenience and needs in the public interest against any anticompetitive for a merger to be permitted is that the convenience and needs clearly outweigh any anticompetitive effects. The District Court in the *First National Bank of Jackson* case, *supra,* applied convenience and needs not only to the stipulated relevant geographic area for assessing anti-competitive effects, but also to two larger areas, stating that the benefits accruing to each separately clearly outweighed any anticompetitive effects in said selected geographic area.

Appellant Intervenor also contends that Appellant's Easton-Phillipsburg, or the Phillipsburg relevant geographic areas are not "sections of the country" within the meaning of Section 7 of the Clayton Act. Therefore, Appellant has not proven a relevant geographic area in which to assess the anticompetitive effects of this merger.

Appellee Intervenor takes issue with Appellant's contention that the District Court erred in its deter-

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[28] Public Law 89-356, 64 Stot. 892, 12 U.S.C. § 1828(c)(5)(B).

mination of convenience and needs by failing to adequately consider whether the same benefits could be achieved by a less anticompetitive means. The District Court considered this problem on the basis of the evidence in the case. The facts in the case more than support the conclusion that there was no alternative for these two small banks.

Both banks were faced with desperate management and personnel problems. Both lacked capital and much needed specialists in several banking areas. Both banks needed a full-time trust officer, a commercial and industrial specialist; a mortgage specialist; a larger lending limit; and top management personnel. They had reached a point where they were not competitive and were not serving serious convenience and needs of the community.

Both banks made serious efforts over the years to obtain the needed personnel but were unsuccessful. Inability to pay salaries demanded by the personnel needed was an insurmountable obstacle. Second National consulted a Senior Vice-President of a large Newark bank for advice on how to solve its problems and for aid in obtaining personnel. This man worked diligently for over a year but was unable to get any personnel due to inability to pay salaries, the small size of the bank, and type of city in which the bank was located. Without the needed management and personnel and capital neither bank would be able to survive long as separate entities.

Officials of three substantial banks stated these two banks could go nowhere separately and their future was dismal without the merger. All felt the merger would be the salvation of these two banks and would give the resultant bank the needed personnel and cap-

ital to solve their problems to grow and be a competitive factor.

The only alternative to this merger would be mergers with other banks. The other banks waiting to acquire these two small banks are the large Newark banks. This would result in the large Newark banks obtaining a greater concentration of the banking resources in the State, which would be in itself anticompetitive, and eliminate two banks from the picture. On the other hand the merger of the two small banks would be pro-competitive and certainly more in line with the aims of the antitrust laws than to have them acquired by the largest banks in the state.

Appellee Intervenor therefore requeste the opinion of the District Court be affirmed as this merger is in the public interest, will be pro-competitive, furnish serious convenience and needs of the community, and save these two banks so they together can become a forceful competitor in the area.

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April 1970

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1093

UNITED STATES OF AMERICA,
Appellant,

vs.

PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY, SECOND NATIONAL BANK OF PHILLIPSBURG, and WILLIAM B. CAPP, Comptroller of the Currency,
Appellees.

On Appeal from the United States District Court for the District of New Jersey

BRIEF FOR APPELLEES, PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY AND SECOND NATIONAL BANK OF PHILLIPSBURG

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IN THE

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Appellees.

On Appeal from the United States District Court for the District of New Jersey

BRIEF FOR APPELLEES, PHILLIPSBURG NATIONAL BANK AND TRUST COMPANY AND SECOND NATIONAL BANK OF PHILLIPSBURG

Statement

This appeal involves a challenge by the Justice Department to the merger of two small banks, the Phillipsburg

National Bank and Trust Company (hereinafter "Phillipsburg National") and the Second National Bank of Phillipsburg (hereinafter "Second National"). The district court in its opinion approving the merger found that "[e]ach of the defendant banks is a very small bank and the resultant bank will be a small bank." (A. 675). As of year-end 1967 Phillipsburg National had assets of less than $24 million and Second National had assets amounting to $17.3 million (A. 684).

Procedural History

Application to merge Second National into Phillipsburg National was made to the Comptroller of the Currency on May 1, 1967. Other bank agencies and the Justice Department were duly notified (12 U. S. C. §1828(c)(4). A hearing on the matter was held before the Comptroller on August 14, 1967. Justice did not appear at the hearing. On December 18, 1967, the Comptroller, after considering the testimony of witnesses, the application to merge and all agency recommendations, approved the merger, finding that it would be in the public interest.

On January 16, 1968, the Attorney General filed a Complaint claiming that the proposed merger violated section 7 of the Clayton Act (15 U. S. C. §18) when viewed in two markets—Phillipsburg and "environs" and Phillipsburg-Easton and "environs" (Pl. Ex. 1; R. 85)—markets that the district court was later to characterize as "narrowly drawn." (A. 681) These markets, after interrogatories were submitted by defendant banks, were later defined to include Phillipsburg and the four nearby municipalities and Phillipsburg-Easton and the 12 neighboring municipalities (Pl. Ex. 1, R. 85).

In the Answer the defendants denied the allegations of the Complaint and claimed that the relevant trading area

was the Allentown-Bethlehem-Easton Standard Metropolitan Statistical Area (ABE-SMSA) with the addition of nearby portions of Bucks County in Pennsylvania and Hunterdon County in New Jersey (Defs'. Answer ¶1; A. 8). Defendants alleged that the product market included the activities of various financial institutions involved in the borrowing and lending of money. The banks also alleged the affirmative defense provided by the Bank Merger Act of 1966 (hereinafter BMA '66), claiming that the convenience and needs redounding to the benefit of the community would clearly outweigh any anticompetitive effect (12 U. S. C. §1828).

Pursuant to the provisions of BMA '66, the Comptroller of the Currency intervened "as of right." (12 U. S. C. §1828(c)(7)(D)) He filed an Answer denying the allegations of the Complaint.

Thereafter, extensive interrogatories were submitted by the Justice Department to the defendant banks. With much effort and expense the two small banks answered the voluminous questions.

An eleven-day trial was had before the United States District Court for New Jersey, Judge Shaw sitting. At the trial some 35 witnesses appeared and testified; more than 175 exhibits were submitted by the parties.

On October 20, 1969, the decision of the district court approving the merger was entered on the docket (A. 1). An appeal followed. Plaintiff had previously moved for an extension of the statutory stay and by order of the district court the stay was extended during the pendency of this appeal (A. 1). Additionally, plaintiff's motion to reopen the record for the submission of evidence as to the effect of the revised New Jersey banking statute was granted and the district court found that the additional evidence corroborated its findings (A. 579, 593).

The Facts

History of Defendant Banks

Phillipsburg National was incorporated in 1856 and converted to a national bank in 1865. At present its main office is located on South Main Street in the Town of Phillipsburg, County of Warren (Complaint ¶3, 12; A. 4, 5; Defs. Answer ¶4, 13; A. 8, 10). Its two branches are located in the Borough of Alpha and in the Hillcrest Shopping Center on Route 22 in Lopatcong Township (Pl. Ex. 53; R. 414, A. 642; Complaint ¶3, A. 3; Defs'. Answer ¶4, A. 8).

Second National was organized as a national bank in 1900. The main office is situated on South Main Street in Phillipsburg. Its branch is on Roseberry Street on the eastern edge of Phillipsburg (Complaint ¶3, A. 3; Defs'. Answer ¶4, 13, A. 8, 10; Pl. Ex. 54; R. 414; at p. 6).

Neither of the defendant banks throughout the entire history of their operations has been involved in a merger. Nor have they participated in a consolidation or bulk purchase of the assets of another bank (Pl. Ex. 17; R. 85).

The merger agreement entered did not call for a premium being paid for the stock of either bank (A. 154-55, 380. As William F. Greenley, a senior vice president of Fidelity Union Trust Company in Newark who had aided in the early negotiations, testified:

> As a matter of fact, I think just on the statistical basis the actual settlement came down pretty close to what you would have done just doing it on a pen and pencil basis. (A. 154-55)

The terms arrived at by these two banks were, as Furman Denton, executive vice president and cashier of the First National State Bank of New Jersey, said:

> . . . eminently equitable . . . there did not appear to be a premium. And the sole objective appeared to be to put together two banks on a proportionately equal basis. (A. 380)

The Town of Phillipsburg lies immediately across the Delaware River from the City of Easton. The town's population figure of 18,500 has remained almost the same over the last 15 years (A. 262). No land for development remains in Phillipsburg and, as a result, the growth has been in the surrounding area (A. 262). The downtown area has deteriorated and the stores are moving out (A. 291-92). Characterizing the area in which the main office of each bank is located, Furman Denton said:

> I would think of them as being down on the corner of Mulberry Street and somewhere else. It is right near Skid Row. And certainly there is a lack of modern buildings around it, lack of parking. (A. 155)

The whole of the downtown commercial area might be covered in a fifteen-minute walk (A. 222). So limited is the variety of goods offered by the stores in Phillipsburg that one cannot purchase a man's suit there (A. 287). Until the Hillcrest Shopping Center opened, anyone buying shoes would have to settle for a low-grade pair (A. 292). One owner of a general food store in downtown Phillipsburg who now has other stores in the surrounding communities contemplates closing the downtown store because of the absence of demand (R. 1348). An urban renewal plan for the area was defeated by the voters (A. 292).

Easton, across the river, shares some of these problems. As one general contractor put it:

> . . . we have tremendous growth outside of the City of Easton, because the City of Easton is the same as the Town of Phillipsburg. They are stagnant. They have gone through the process and there has to be either urban renewal or complete demolition to start anew. (A. 319)

William F. Jones of Easton National Bank & Trust listed some of the industries in Phillipsburg and Easton; he noted that Ingersoll-Rand is probably the largest single plant located in Phillipsburg and that it employs between three and four thousand people (A. 137). Also located in Phillipsburg are Baker Chemical and Shahmoon Industries (A. 137, 336-37). Dixie Cup and American Can are among the large companies located in Easton. Industrially, Phillipsburg and Easton have grown in the last five years with new plants having been built by companies like ITT&T, Fairmont-Lavalle, S.I. Handling Systems, and Lavalette Corporation (A. 138).

The growth areas are outside Phillipsburg and Easton. As Louis Hajdu, a general contractor in the area, stated:

> The growth of this 40-mile radius seems to be hinged to the fact that we are getting Route 80 and Route 78 through to our area at the present time. It is mostly pretty well done, and the growth is in all of the outlying areas. Belvidere is going to have tremendous growth with Hoffmann-LaRoche coming in. Hackettstown has almost tripled in size in the past few years. Washington has started. Phillipsburg itself seems—now seems to be very, very quiet. Lopatcong Township has doubled if not tripled in the past ten years. Hopatcong Township [sic] has a tremendous growth gain. Alpha is

> just about done because they have not any place else to grow. They have developed practically to the borough limits, and again in Pennsylvania we have tremendous growth outside of the City of Easton, . . . (A. 319)

Movement of the banks in the Town of Phillipsburg reflects this change. The Phillipsburg Trust Company, N.A., formerly on Main Street, has removed its main office to Memorial Parkway, Route 22 (A. 41). Meanwhile, Phillipsburg National has opened branches in the Hillcrest Shopping Center and in Alpha, and Second National has opened a modern office on Roseberry Street, the eastern edge of the town. Opened in 1964, the Hillcrest Branch of Phillipsburg National by 1968 had $5.5 million in deposits. Its Alpha branch had some $3 million in time deposits (A. 263).

Industrial and Population Growth in the Lehigh Valley

Industrial growth in the area is evidenced by the increase in the number of businesses now experiencing a need for more credit and larger lending limits on the part of the area banks (A. 249, 277-78, 303, 315-16, 338-39, 353-54, 375, 418-19; 429; R. 997). The construction of Routes 78 and 80 in Warren and Hunterdon Counties in New Jersey and the westward shift of industry in New Jersey in response to the enhanced opportunities for motor transportation show the growth potential of the area (R. 1025). Any traveler on the roads between Washington and Allentown can see the increasing development of new industry and the concomitant construction of new housing developments and multiple housing units (R. 282, 375). The largest employer in the Lehigh Valley area is Bethlehem Steel (R. 505). In the Hope-Belvidere area of

New Jersey the Hoffmann-LaRoche Company has been expanding its operations (R. 506, A. 263, 387). Pearsall Chemical Company in Harmony has been growing about 30% a year (A. 359). In Warren County the growth areas have been to the northwest of Phillipsburg in Harmony, Lopatcong, Greenwich and White Townships (A. 261-62). To the southeast, Pohatcong, Bloomsbury and northwest Hunterdon County have also been growing (A. 261-62). The Riegel Paper Company in Milford has grown steadily and it is expected this growth will continue (A. 337).

Looking to the areas outside Phillipsburg, Easton and Bethlehem, the district court found that they are "sparsely populated but progressing rapidly in development from farm lands to home development and industrial and commercial enterprise." (A. 679) The court found industry and commerce moving out of the populated areas. The banks in response to that movement were, the court found, establishing offices beyond the city limits "to service the needs of a rural community that is growing rapidly in transition from an agricultural economy to commercial and industrial." (A. 680)

Defendant Banks' Geographic Area

Defendant banks designated the following as their trading area:

> . . . all of Warren County, New Jersey, the northwestern portion of Hunterdon County, New Jersey (Alexandria Township, Bethlehem Township, Bloomsbury Borough, Clinton Town, Clinton Township, Flemington Borough, Franklin Township, Frenchtown Borough, Glen Gardner Borough, Hampton Borough, High Bridge Borough, Holland

> Township, Kingswood Township, Lebanon Borough, Milford Borough, Raritan Township and Union Township), all of Northampton County, Pennsylvania, all of Lehigh County, Pennsylvania, and that portion of Bucks County, Pennsylvania, within 15 miles of the Town of Phillipsburg, New Jersey. (Defendants' Answer, ¶1, A. 8)

On defendants' case, bankers and businessmen from this area described the growth in the area. They testified that the Lehigh Valley area (as it is often referred to by plaintiff's attorneys in the record) is an economically integrated and significant area and that it serves as a banking market as well as the market for the distribution of many other goods and services.

The Intervenor's Trading Area

The Comptroller alleged two trading areas. "Trading Area A," as it has been delineated in the exhibits submitted by the Comptroller, parallels that chosen by defendants; "Trading Area B" excludes all of Lehigh County except Allentown. Allentown borders on Bethlehem in Northampton County.

The Plaintiff's Trading Area

The Justice Department, in response to the interrogatories submitted, defined Phillipsburg and "environs," one of its proposed areas, to include Phillipsburg and the Townships of Lopatcong, Pohatcong, and Greenwich, and the Borough of Alpha; Phillipsburg-Easton and "environs" was defined to include, in addition, Easton, the Townships of Forks, Williams and Palmer, and the Boroughs of Wilson, West Easton, Glendon, Stockerton, and Tatamy, all in Northampton County, Pennsylvania (Pl.

Ex. 1; R. 85). The population of Phillipsburg and environs was 28,500 in 1960; Easton and environs then had a population of approximately 60,000 (A. 115-16, 678-79).

ABE-SMSA

Full understanding of the competitive factors in this case also requires the consideration of two additional areas. One of these, the Allentown-Bethlehem-Easton, Pa.-N. J. Standard Metropolitan Statistical Area (often referred to by witnesses as the "ABE area" or the "SMSA") has been chosen by the Bureau of the Budget as constituting an economically and socially integrated area. It is one of 224 such areas designated throughout the United States. It includes Lehigh and Northampton Counties in Pennsylvania and Warren County in New Jersey. Defining the characteristics of such an area the Bureau states:

> 'The criteria of integration relates primarily to the extent of economic and social communication between the outlying Counties and central County. A County is regarded as integrated with the County or Counties containing the central cities of the area if either of the following criteria is met:
>
> Fifteen percent of the workers living in the County work in the County, or Counties containing central cities of the area; or twenty-five percent of those working in the County live in the County or Counties containing central cities of the area.' (A. 497)

However, where working population data are not conclusive (it was conclusive in the ABE area), the Bureau would then look to the following: (1) telephone calls in the area, (2) newspaper circulation, (3) retail store charge accounts, (4) retail store delivery services, (5)

official traffic counts, (6) public transportation facilities, and (7) local planning groups (A. 497). Primary data as to these factors were produced by the defendant banks, both in support of the Bureau's determination and in support of the claim that portions of Bucks and Hunterdon Counties were within the market of defendant banks.

Standard Metropolitan Statistical Areas were used by Franklin Edwards, plaintiff's economist, in evaluating certain banking factors (A. 217-18). None of the areas he studied was as small as Phillipsburg and environs or Phillipsburg-Easton and environs in terms of the number of banks and the population of the area (A. 218). The ABE-SMSA itself has one of the lowest concentration ratios among the SMSA's where branch banking is allowed; the largest bank in the SMSA has 17.7% of the total deposits, the three largest have 39.14%, and the five largest 53.8% (Defs'. Ex. 8; R. 776; A. 794-97). After merger, the percentage of bank deposits in the ABE-SMSA held by the largest bank, the three largest and the five largest will be wholly unaffected (Def. Ex. 8; R. 776; A. 794).

Permissible Area For Branching

The other area to be considered is the new seven-county banking district in New Jersey, including Warren, Hudson, Essex, Passaic, Morris, Sussex and Bergen Counties (N.J.S.A. 17:9A-19). These counties now form the First District in New Jersey. Throughout this District, the most populous in the State, branching and merger of commercial banks, savings banks and building and loans are permitted (N.J.S.A. 17:9A-19, N.J.S.A. 17:12B-26). Before the passage of the new law in 1968, there were 22 applications for branches in the counties making up this district; in the first nine months of 1969, there were 119

branch applications, or over five times as many.* Within that district Phillipsburg National ranks 44th with .37% of the total deposits and Second National ranks 58th with .24% of total deposits; together they would have six tenths of one per cent of the total deposits (Int. Ex. 30; A. 581, A. 869).

Already, large and substantial Newark banks have begun to move into Warren County. The National Newark & Essex Bank, third largest in the district, headquartered in Newark and holding total deposits of over $579 million, has obtained approval of a merger with the Washington Trust Company, Washington, New Jersey, with deposits of $16 million and with branch offices in Oxford and White Townships. Peoples Trust Company of New Jersey, fourth largest, headquartered in Hackensack and holding total deposits of over $502 million, has filed an application to merge with Peoples National Bank of Hackettstown, a bank holding $19 million in deposits (Int. Ex. 30; A. 581, A. 871). The holding company associated with the First National State Bank of New Jersey, ranked first in the district and itself holding deposits of $659 million, is in the process of acquiring as an affiliate the Warren County National Bank, which has offices in Hackettstown and Washington.

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* When submitting its report to the Comptroller with regard to the proposed merger of the Washington Trust Company, Washington, New Jersey, into the National Newark & Essex Bank, Newark, New Jersey, the Justice Department fully recognized the significant changes in the market which the new law had produced and there stated that the merger would not have any significant effect on existing and potential competition. The Justice Department then clearly stated that "[t]he recent broadening of the geographic boundaries of permissible branch office operation by commercial banks in New Jersey has induced substantial market extension activity, both by *de novo* branching and by merger." (Int. Ex. 30; A. 581, A. 889-90)

The only two banks in Hackettstown and the only two banks in Washington, as a result, will be associated with some of the largest banks in the District and State. Similarly, the the Carteret Savings and Loan, as a result of the acquisition of a Phillipsburg building and loan, has opened an office in downstown Phillipsburg. Carteret is building a new office in the immediate vicinity of the Hillcrest Shopping Center in Phillipsburg on Route 22, a short distance from the branch of Phillipsburg National in Lopatcong Township.

Factors Affecting Parameters of Geographic Market

Geographic Distribution of Banking Customers

Many bankers testified that their customers were drawn from a 20-30 mile radius around the bank. Robert Leupo, executive vice president of Phililpsburg Trust Company and the first witness called by the Justice Department, stated that his bank did business in "a radius of 25 miles at this time." (A. 43). Clark Bowers, president of the Washington Trust Company of Washington, New Jersey, also called by plaintiff, stated that his trading area extended 20 miles from the bank (A. 70). Lester Pursell, executive vice president of Second National, estimated that the bank did business within a 25-mile radius of Phillipsburg (Pl. Ex. 84; R. 1526, A. 657). The President of Phillipsburg National, Harold J. Curry, felt that his bank could compete effectively within a 25-mile radius of Phillipsburg (Pl. Ex. 53; R. 414, at pp. 205-06). The President of the Hunterdon County National Bank testified that his service area extended some 23 miles from the bank (A. 483).

Restrictive Bank Policies

Troy Rhoades, president of the Nazareth National Bank with offices in Nazareth and Forks Township, exemplified

the conservative attitude of some bankers in the area, stating that he would not solicit in the Easton area:

> ". . . they have enough banks there to take care of their own business. They do not come into our territory, we don't go into their territory." (A. 81)

Nazareth is six and one-half miles from Phillipsburg; Easton, as the district court found, is one mile from Phillipsburg (Def. Ex. 33; R. 776; A. 813; A. 679). Mr. Rhoades admitted on cross-examination that most bankers would disagree with his concept of the banking business and that he was in the minority in this regard (A. 89). On redirect he agreed that there were no particular difficulties in a bank's serving a geographic radius of 30-40 miles (A. 92-93).

Also to be included in this conservative group of bankers is William F. Jones, president of the Easton National Bank and Trust Company. A colloquy with the judge demonstrates this attitude:

> The Witness: We have not aggressively sought business in Bethlehem or Allentown, or areas beyond our defined business area.
>
> The Court: Is there any reason peculiar to policy of your bank, up to this time, which caused you to concentrate in the area that you have just defined in answer to a previous question? That is, as far as seeking business is concerned, aggressively seeking business.
>
> The Witness: Perhaps peculiar to the banking picture, we have an area in which we are doing business, and other institutions in other areas have an area in which they are doing business. And I daresay that if we sought business in Bethlehem or

> Allentown, or wherever, Bethlehem and Allentown, or whomever, may be seeking business in our area.
>
> The Court: A friendly relationship, isn't there?
>
> The Witness: No agreement, however.
>
> The Court: That is understandable. I can appreciate the fact that I am going to have a real problem here in deciding the degree to which competition presently exists. (A. 132)

Based on the attitude of these and other bankers, Judge Shaw in his opinion stated:

> It seems from the evidence that most of the small banks in the area have not been interested in building up banking services except to the extent that aggressive competitors led the way. An ultraconservatice policy of banking seems to have been prevailing with reluctant change occurring only when profits and future growth were threatened by virulent competitors. There is an attitude of complacency on the part of many banks. They are content to continue outmoded banking practice and reluctant to risk changes which would improve service and extend services over a greater area to a larger segment of the population. (A. 688)

Charles Langner, the president of the First National Bank of Belvidere, a bank whose policy is evidenced by the fact that his loans amount to only 28% of his total deposits (A. 565), stated during direct that his banking radius was some 10 to 15 miles (A. 564). His bank, as his lending policy suggests, did not solicit (A. 563).

Younger more aggressive bankers from the area, like James Greer, the executive vice president of Lafayette Trust, also located in Easton, generally adopted a more expansive definition of their trade area:

> Our immediate trade area is all of Northampton, Warren and Bucks Counties, including the Riegelsville area where the Girard Trust of Philadelphia has a branch, Lehigh County, and some parts of southern Monroe and southern Carbon County to the north of us. (A. 388)

Plaintiff's witness, Reese Jones, president of the First National Bank & Trust Company of Bethlehem, had not gone more actively into Easton because he was "repairing a lot of fences in the Bethlehem area." (A. 103). It was his intention, when ready, to go "as far as we can go" and "anyplace we see a potential." (A. 110) He saw Allentown, Bethlehem and Easton as "getting closer and closer together all the time." (A. 104).

The testimony showed that large banks from Allentown and Bethlehem actively solicit customers in Phillipsburg and that other banks located throughout the trading area delineated by the defendants seek business from the whole of the area (A. 141, 388-90, 457).

Solicitation by Banks

Witnessses associated with the larger banks in the area generally testified that they could, or did, actively solicit business throughout the SMSA. The Union Bank of Bethlehem and The Merchants National Bank of Allentown solicit actively and send bank representatives into Phillipsburg and Easton (Def. Ex. 60; R. 1333, A. 625-26; Pl. Ex. 53; R. 414, A. 633-35; A. 389-90). The Girard Trust Company with an office in Riegelsville, Pennsylvania, has become a significant competitive factor throughout the whole of defendants' trading area; it actively advertises its rates paid on savings and bonds in the Easton Express (Def. Ex. 14; R. 776; A. 805; Def. Ex. 23; R. 776; Def.

Ex. 52; R. 1090), a daily newspaper which, in conjunction with the Allentown Call, serves the whole of the ABE-SMSA. (Def. Ex. 13; R. 776; A. 803; A. 364). The Girard's analysis of the savings bonds held by the Riegelsville office, segregated by customer address, shows that its influence has spread throughout the trading area (Def. Ex. 11; R. 776; A. 801). Of its total of savings and demand accounts and savings bonds, that branch has 20.29% arising from Easton, 9.3% drawn from Phillipsburg, 7.25% from Milford and 1.76% from Alpha (Def. Ex. 11; R. 776; A. 801). Of its savings bonds, 37.16% are drawn from Easton, 12.93% are drawn from Phillipsburg, 4.67% are from Milford and 1.67% from Alpha. (*Id.*)

The district court noted as to statistics such as these:

> These percentages have significance only to the extent that they are considered in conjunction with concentration of population. For example, it would be expected that a higher percentage of deposits and loans would be derived from a heavily populated area of the market than from one that was sparsely populated. But that circumstance would not be a valid reason for moving the small town out of the relevant market. If the ratio of business on a per capita basis were the same or comparable, the small town belongs in the market. Any other approach would exclude most of the suburban areas. (A. 681)

Solicitation by Girard is shown by its direct mail advertisements sent to doctors, lawyers and morticians in Phillipsburg, Nazareth, Martins Creek, Alpha, Washington, Allentown, Bethlehem, Belvidere and Milford (Def. Ex. 27; R. 776). By direct mailing of 9,500 pieces, it has advertised its savings bonds in the Riegelsville, Hunterdon and Warren County areas (Def. Ex. 21; R. 776).

The defendant banks intend, after merger, to hire a commercial and industrial loan officer, a trust officer and a real estate specialist (A. 265; Pl. Ex. 53; R. 414, A. 650). A consumer loan officer, Anthony Stillo, has already been hired by Phillipsburg National (A. 408-09). It has been the contention of defendant banks that the hiring of these additional officers will allow them further to expand their service area.

Commercial bankers recognize that increased size would allow the resulting bank to hire specialized officers and that these officers will naturally seek business farther from their office of operations (A. 142-43, 160; Pl. Ex. 52; R. 414, at p. 132; Pl. Ex. 53; R. 414, A. 648-49). As a result, the merged bank would have the opportunity to expand its geographic market and to compete more effectively in the expanded market (A. 500-01, 530-31).

No bank in Warren County now employs a full-time C & I officer or trust officer (A. 281-82). Those banks from other parts of the trading area employing specialized personnel in these departments do business throughout the SMSA and some of them can solicit more business throughout the SMSA if they choose (A. 99, 109-10, 141-42, 149, 389-90, 462, 467-68, 500-01; R. 1307, Pl. Ex. 52; R. 414, A. 602, 612).

Banking by Mail

Banking by mail has expanded the area of competition among banks (A. 160, 263-64, 559, Def. Ex. 51; R. 1090; A. 825; Def. Ex. 54; R. 1091; A. 826; Pl. Ex. 52; R. 414, at p. 69). The claim has been made by banks like First National of Milford that "there's a red, white and blue drive-up window on almost every corner" (Def. Ex. 51; R. 1090; A. 825).

Newspaper Circulation and Radio Coverage

Edward E. Howard, director of advertising for the Easton Express, was called by the defendant banks to testify as to the market area served. He stated that his circulation was "primarily within a 15 to 20-mile radius" and that the newspaper covered the eastern portion of Northampton County, Warren and Hunterdon Counties (A. 363-64). Together with the Allentown Call, the Easton Express has published a brochure emphasizing the advantage to national advertisers of advertising in their papers if they wish to reach buyers in the ABE-SMSA (A. 365). The SMSA is viewed by these advertisers and by the papers as one unified market (A. 365). Classified ads from Allentown and Bethlehem appear in the Easton Express. Advertisements by The First National Bank of Milford, Girard Trust Bank, The First National Bank and Trust Company of Bethlehem, the Hunterdon County National Bank and the Nazareth Savings and Loan Association are also found in the Easton Express (Def. Ex. 51; R. 1090; A. 825; Def. Ex. 52; R. 1090; Def. Ex. 55; R. 1091; A. 827; Def. Ex. 56; R. 1091; A. 828). Nazareth National advertises its Forks branch in that paper (A. 77). The Valley Federal Savings and Loan, located in Easton, engages in vigorous advertising in the Easton Express (A. 368). That institution also advertises in the Bethlehem Globe Times, the Allentown Sunday Call and the Washington, N. J. papers (A. 275).

Radio station WEEX, an affiliate of the Easton Express, broadcasts to the SMSA and reaches Bucks and Hunterdon Counties (A. 370). There, too, advertisers come from Allentown, Bethlehem and throughout Warren County (A. 370).

The advertising program engaged in by Girard Trust has provoked comment from local bankers who recognized its extensive advertising in local papers (A. 43, R. 492; Def. Ex. 60; R. 1333, at p. 153), on the local radio station (Def. Ex. 25; R. 776) and on the Philadelphia television stations which are received throughout the trading area described in defendants' Answer (Pl. Ex. 52; R. 414, at pp. 63-64).

Commuting Patterns

An analysis of commuting patterns indicates the general mobility of the labor force. People in the area are willing to, and often do, travel greater distances to work than they did in the past; now they travel 25, 30 or more miles to work (A. 45-46, 286-87, 423, 472-73; R. 281). Employees commute from nearly all over the trading area to their jobs at the Riegel Paper Company (Def. Ex. 36; R. 818; A. 814; A. 258-59), Alpha Lehigh Tool Company (A. 352, R. 1058), Pearsall Chemical (A. 357) and Baker Chemical (R. 806, Def. Ex. 38; R. 813; A. 816). Of the 4,248 employees of Ingersoll-Rand, of whom all but 250 work in the Phillipsburg plant, 2,160 were New Jersey residents and 2,088 were Pennsylvania residents (A. 258).

In attempting to show a more limited geographic market, plaintiff relied heavily on a "Journey to Work" document, Exhibit G-47 (Pl. Ex. 47; R. 414). Plaintiff's economist, Franklin Edwards, was not completely satisfied with it (A. 191, 230). The testimony of Emanuel Gnat, the chief of the planning and analysis staff for the Prudential Insurance Co., established that, on the basis of errors made in the sample and corrections which were not made in Pennsylvania and New Jersey, these data were completely invalid if the aim was to show commutation across county boundaries (A. 316-17, 533-34).

Mr. Gnat said that he himself would not use the data to show commutation across county boundaries (A. 533-34). The document itself states that the original data for the tables were "impaired." (Def. Ex. 47; R. 414, at p. X).

Commuting Time

One factor in ascertaining the geographic area within which the effect of the merger is to be judged is the time required to travel by automobile from one community to another; this bears on the accessibility of alternate financial entities. Louis Hajdu, a general contractor with offices in Alpha, testified as to commuting time from his office. Mr. Hajdu based his estimates on actual road time and his prior experience in attending meetings at various points in the area (A. 327-28). Based on this witness's testimony as to the location of his office outside Phillipsburg and four minutes south, the travel time from Phillipsburg is as follows:

Municipality	*Time from Phillipsburg*	*Time from Alpha*
Belvidere	13 min.	13 min.
Forks Township	9 min.	13 min.
Flemington	25-30 min.	26 min.
Washington	11½ min.	11½ min.
Hackettstown	27 min.	27 min.
Nazareth	12 min.	16 min.
Riegelsville	10 min.	6 min.
Milford	18 min.	14 min.
Bethlehem	14 min.	18 min.
Allentown	20-21 min.	25 min.

(A. 260, 327-28, 472; R. 1513).

Corroborating this breakdown are the estimates of Joseph Varga, vice president of Phillipsburg National. He stated that from Phillipsburg to Allentown "is a matter of 20 minutes, Bethlehem 15 minutes. To commute to Riegelsville you're talking about 10 minutes from the center of town." (A. 260). Herbert D. Stem, president of the First National Bank of Milford, estimated the commuting time between Phillipsburg and Milford at 20 minutes."* (R. 1484).

Willingness to Cross State Boundries and Traffic Patterns

The deposit analysis performed by the Riegelsville branch of Girard Trust shows a spread of customers on both the New Jersey and Pennsylvania sides of the Delaware River. Bankers solicit on both sides of the River (Pl. Ex. 52; R. 414, A. 603-05; Def. Ex. 60; R. 1333, at pp. 138, 142). Phillipsburg National itself has solicited consumer loans in Allentown and Bethlehem through dealers (Pl. Ex. 53; R. 414, at p. 206). Competition for Phillipsburg business is as likely to come from banks in Pennsylvania as from those in New Jersey. Competition for mortgages at Phillipsburg National comes from Easton National, Lafayette Trust and Valley Federal Savings and Loan in Easton, as well as from the First National Bank in Washington (now the Warren County National Bank) and all the other banks in Warren County (A. 255-56). Hunterdon County National and

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* On the roads linking the major cities of the SMSA, the travel time compared favorably with that in major downtown metropolitan areas where similar amounts of time are required to traverse a few city blocks. The district court concluded that travel time compared well with that within the City of Philadelphia, a portion of the market chosen in *United States* v. *Philadelphia National Bank*, 374 U. S. 321 (1963). (See A. 680).

Girard Trust also compete for this business (*Id.*). Second National itself considers its geographic area to include Allentown and Bethlehem and to extend some 25 miles around the bank's office (Pl. Ex. 84; R. 1526, A. 657). Mr. Greer of Lafayette Trust, located in Easton, and Harold J. Cooper, formerly vice president and treasurer of Union Bank & Trust of Bethlehem, felt that their trading area included areas on both sides of the river and embraced the whole of the SMSA, with variations reflecting only their relative location within the SMSA (A. 388, 457). Charles Langner of the First National Bank of Belvidere, 11.5 miles north of Phillipsburg, attributes the growth in his deposits over the last decade to the fact that his bank was paying a higher rate of interest on savings than banks in Lehigh Valley or in Phillipsburg-Easton and that he thereby received considerable deposits from both Pennsylvania and New Jersey (A. 565-66).

There are other factors indicating significant and substantial commercial interchange across the river. People living in the Lehigh Valley readily cross the state boundary line between New Jersey and Pennsylvania to shop and to work (A. 260-61). Workers will freely cross the Delaware River to obtain employment. There are no jurisdictional restrictions preventing them from working at job sites on both sides of the river (A. 320-21, 411, 432-33).

Traffic at the free and toll bridges in Phillipsburg shows that a substantial number of people in the Lehigh Valley cross the Delaware on a daily basis. The general use of the two bridges connecting Easton and Phillipsburg shows that the 1966 average daily traffic on the Phillipsburg-Easton toll bridge was the highest total travelled of the Delaware River bridges. There were

22,439 automobiles and light trucks and 6,199 buses and heavy trucks daily. Traffic counts at the free bridge were also substantial, with 19,831 automobiles and light trucks and 400 buses and heavy trucks crossing daily (Def. Ex. 32; R. 1220).

There is also a heavy flow of traffic between Phillipsburg and Allentown-Bethlehem. The traffic count of vehicles starting in Phillipsburg and going to Allentown or Bethlehem shows 1,956 private cars and light trucks and 97 heavy trucks taking this route on a daily basis. This volume of one-way traffic was established by a traffic study combining the 1964 weekly and 1966 weekend average traffic volume over the free and toll bridges connecting Phillipsburg and Easton (Def. Ex. 61; R. 1432; A. 830; A. 260, R. 1428-31; Pl. Ex. 53; R. 414, A. 648). The significant number of bridge crossings over the two bridges linking Phillipsburg and Easton, one toll and one free, shows a continuing and constant flow and interchange of people throughout the trading area delineated by defendants, and establishes that people readily cross the state boundary. When daily traffic figures are related to the total population of Phillipsburg (18,502), it is clear that there is substantial social and commercial intercourse between Phillipsburg and Allentown-Bethlehem.

While consumers on both sides of the Delaware River treat the whole of the Lehigh Valley as one shopping market, there are additional incentives for residents of Lehigh and Northampton Counties to travel to Warren County, because of the differential in sales tax, the operation of privately owned liquor stores in New Jersey providing more individual service to the customer, and the availability of ample parking at stores like Orr's of Warren (A. 292-93, 373-74, 377-78, 432-33, 484; Pl. Ex. 53; R. 414, A. 648). A similar parking conveni-

ence is not available in the Easton or Bethlehem stores operated by Orr's (A. 372). The absence of any toll charge for telephone calls from Easton to Phillipsburg also facilitates the transaction of business across the Delaware River (A. 228).

Shopping Patterns and Deliveries

The three Orr's department stores located in Easton, Bethlehem and in the Hillcrest Shopping Center are used interchangeably by residents in the Lehigh Valley; a shopper may visit each of the three stores on the same trip (A. 261, 373-76). The willingness to shop from one town to another shows that the whole SMSA is considered to be one shopping market (A. 366, 499-500). Orr's of Warren, the store located in the Hillcrest Shopping Center, does not have any dominant shopping center to the east and northeast, and it draws customers from Blairstown, Hackettstown and other points within a 25- to 30-mile radius (R. 214, A. 373). The availability of parking at Orr's of Warren, which is lacking at the Easton and Bethlehem stores, also leads Bethlehem and Easton customers to travel to the Warren store (A. 372). Orr's, at its Bethlehem, Easton and Phillipsburg stores, provides a check-cashing service and it is just as likely to have checks from Easton, Bethlehem or Flemington in its Easton store, its Phillipsburg store or its Bethlehem store (A. 374).

Individuals residing in the Flemington area will often shop in the shopping centers located in the periphery of Phillipsburg (A. 472). Those residing in the Milford area, which lacks a shopping area, must travel into Phillipsburg or Flemington to do their shopping (A. 428, R. 1484). Because many of the towns in the area have no place to shop or bank, or because they cannot obtain

many necessary items in their hometowns, residents there will travel 25, 30 or more miles to do their shopping (A. 367, 372-73, 386). As a result the SMSA is the market area for shopping in the Lehigh Valley (R. 1096, A. 386, 389, 428; Pl. Ex. 52; R. 414, A. 613-14).

People travelling to the various shopping centers are apt to use the bank located there (R. 885). The tendency of shoppers to use the stores in the SMSA interchangeably and to bank at a facility near these stores further indicated to Nevins Baxter, the economist called by defendants, that the SMSA is a banking market (A. 512).

Market Area for Other Services

The market area for other goods and services varies, but it, too, indicates that the Lehigh Valley does serve as the banking market. Food and department stores serve a 25-35 miles radius (A. 372-73, 486). Prudential uses the SMSA as its basic operating unit (A. 311-12). Auto dealers serve a 20-25 mile radius (A. 437). Contractors and truckers serve an even wider area (A. 321, 432-33, 437).

The District Court's Evaluation of the Market

The lower court, on the basis of the evidenced produced, rejected the market areas proposed by the Justice Department:

> The areas beyond the cities of Phillipsburg and Easton are primarily rural with excellent highways for rapid and easy access to the well populated areas. This factor, associated with mobility of the population and economic integration of a much larger area, indicates that the market proposed by the government is too small. (A. 677)

The court found the area proposed by defendant banks to be "too large, but, nevertheless, more realistic than the proposals of the government" (A. 677). As to the relevance of the SMSA the court stated:

> There is considerable evidence which tends to support the argument of defendant banks that the SMSA is an appropriate geographic market. There is easy access by excellent, non-congested highways from one point in the area to the other and there is a high degree of economic integration (A. 677).

However, rejecting the markets chosen by all parties, the court delineated another market. That market includes 13 municipalities in Warren County, 10 in Hunterdon, 17 in Northampton and 5 in Bucks (A. 678-79). No part of Lehigh County was included. A few municipalities are within a 17-mile radius, and most fall within a 12-mile radius (A. 678-79). Commuting time in the area delineated runs from 7 to 20 minutes (A. 680). Characterizing the areas included within the market, the district court said:

> The areas beyond the boundary lines of the cities of Phillipsburg, Easton and Bethlehem are sparsely populated but progressing rapidly in development from farm lands to home development and industrial and commercial enterprise. All significant development is taking place beyond the city limits of the well populated cities. For example, the population in Phillipsburg has remained more or less static for a long period of time. Industry and commercial enterprise has been moving out of the well populated areas of the city. The same is true in some degree with the city of Easton. Branch banks have been established beyond city limits to service the needs of a rural community that is

growing rapidly in transition from an agricultural economy to commercial and industrial (A. 679-80).

The judge outlined the problems of congestion and deterioration in the central cities of the market and the consequent shift of business, banking and shopping to the suburbs. He concluded that to accept the government's proposed geographic markets "would be to ignore the population, commercial and industrial drift into the suburban areas within a radius of approximately seven to fifteen miles of the cities of Phillipsburg and Easton." (A. 680) The court further concluded that the "prevalent pattern of employment within a described area with regular and constant movement of the population and routine shopping by the population from one point to another" evidenced that the area was "economically integrated as a market." (A. 680-81)

Product Market

Now, added to the competition from commercial banks headquartered in the area at the time of trial is the competition provided by the large First District banks moving into defendants' trading area. Plaintiff's economist, testifying before the passage of the new law, agreed that, in assessing the effects of this merger, the new branching law must be considered, but he based his conclusions on the old law (A. 208-09). Now, three of the four largest banks in that District are spreading their influence into Warren County and the trading area (Int. Ex. 30; A. 581, A. 871).

The situation of these new banks entering the market parallels that of the Girard Trust in Riegelsville. There the Girard Trust has become a formidable competitor for trust business in Easton and Bethlehem (A. 110).

It has done substantial amounts of mortgage business in Phillipsburg and the surrounding communities (Pl. Ex. 53; R. 414, A. 635-36). The Girard branch, by a telephone call to the branch divisional vice president, can obtain approval for a $250,000 loan (Pl. Ex. 52; R. 414, at p. 99). The Girard Trust stands behind all its branches, ready to support their activities and to give them the competitive leverage that large banks enjoy in the saving and lending field (P. Ex. 52; R. 414, at pp. 96-97; R. 731). So pronounced are the differences between defendant banks and the Girard Trust that the district court specifically addressed itself to Girard's high percentage of demand to total deposits and its percentage of C & I loans. The district court thereby concluded that the defendant banks are primarily savings institutions (A. 672). It found that "[t]he activity of the defendant banks in the field of services unique to commercial banking is very limited." (*Id.*) Under these circumstances, it is necessary to turn to the activities of other financial institutions.

Activities of Financial Institutions

Even plaintiff's expert, Franklin Edwards, admitted that there is a vying for the savings dollar among commercial banks, insurance companies, mutual funds, stock market brokers, savings and loan associations, mutual savings banks, credit unions and pension funds (A. 238-40). On the lending side he likewise saw competition among commercial banks, credit card companies (some of which are now closely associated with banks), department stores, insurance companies, finance companies, mutual savings banks, credit unions, and building and loan associations (A. 238-41). It becomes essential to ascertain what those men actively engaged in the financial markets consider to be their competition.

Savings & Loans

Among the bankers testifying both for plaintiff, defendants and the intervenor, it was uniformly agreed that savings and loans and building and loans are direct competitors of commercial banks and that they are considered by the public to be as much a "bank" as the commercial banks are (A. 60-61, 71, 107, 158, 250, 273, 393, 459, 475, R. 334-35, 492; Pl. Ex. 52; R. 414, A. 610; Pl. Ex. 84; R. 1526, at pp. 267-69). The economic experts called by both parties traced the continuing interplay between savings and loans and commercial banks in their competition for the savings dollar (R. 750, A. 509). Savings and loans and building and loans take a major portion of the real estate mortgage loans in the Lehigh Valley area (A. 59, 108, 160, 251-52, 361-62, 475, 493). Their ability to offer a longer term and a smaller down payment makes them one of the greatest competitors of commercial banks (A. 59, 108, 160, 251-52, 361-62, 475, 493). One aggressive savings and loan, the Valley Federal, located in Easton, has taken mortgages in Warren, Lehigh and Northampton Counties (300 in Warren alone) (A. 274-75; Def. Ex. 47; R. 854; A. 821).

Savings Banks

Mutual savings banks are competitors of commercial banks both for the savings dollar and the lending dollar and are similarly considered by the public and by bankers to be in the "banking business." (A. 60-61, 158, 238, 240, 448-49, 475, 509; Def. Ex. 54; R. 1091; A. 826). The services offered by savings banks in New Jersey parallel those offered by commercial banks. As a result of banking practices in the State, they even offer checking accounts (A. 158-59, 448-50). The trust services offered by the Howard Savings Bank and others are

some of the best in the State of New Jersey and rival those offered by commercial banks in the area (A. 158). The strong impact of savings banks on the mortgage market has long been recognized by bankers and was recognized by plaintiff's economist (A. 59, 160, 240, 475-76, 493). While there are no savings banks headquartered in the areas delineated by the parties, the Howard Savings Institution has more than $2 million in real estate mortgages outstanding in Warren County alone, and the United States Savings Bank has both depositors and mortgage loans in Warren County (A. 450; Def. Ex. 16; R. 776; A. 809). The savings banks advertise over radio and television, so that Phillipsburg residents are well aware of the rates offered by these institutions (A. 252). Under the new law, savings banks, as Mr. Licklider, president of United States Savings, noted, may branch throughout the First District, just as commercial banks (A. 453-54).

Insurance Companies

The insurance companies are also recognized competitors. Commercial bankers and representatives of other financial intermediaries recognize that insurance companies, by making an appeal for the savings dollar, by making loans against the cash surrender value of policies and by participating in the commercial and industrial and real estate loan markets, are direct competitors of their own institutions (A. 60-61, 71-72, 107, 158, 250-51, 288, 296-98, 304-05, 393, 475, R. 970, Pl. Ex. 52; R. 414, A. 611).

Emanuel Gnat, chief of the policy and planning staff at the home office of Prudential in Newark, New Jersey, testified for defendants as to the activities of Prudential in the SMSA. As a former insurance agent in the field and as an instructor for new agents, he testified as to the

various incentives held out by the insurance industry in obtaining the savings dollar from the customer (A. 296-97). With 1,500 agents actively seeking business for life insurance companies in the ABE-SMSA, the trading area of defendants is more than well covered by agents (A. 312, 314-15; R. 959-60). The training program for new agents teaches them how to meet objections from persons who save at banks (A. 298) and tries to impress them with the need to sell the savings concept to the customer (A. 308).

Plaintiff's economist claimed that insurance companies were not very important factors in the attraction of the savings dollar (R. 733). But the emphasis placed by insurance agents on the savings aspect of life insurance has resulted in total life insurance industry reserves in the trading area amounting to approximately $456 million. That total includes endowment reserves of $60 million. These figures are based on Prudential's actual share of the market (A. 296-98, 306-08, 313-16).

Policyholders can and do obtain loans by borrowing against the reserve in their insurance policy at a rate no higher than 5% (A. 73, 301-02, 475).

Insurance companies are very active competitors in the C&I loan market in the trading area (A. 249, 302-03, 315-16, 494; R. 966). The Phillipsburg National Bank has itself participated with an insurance company in making a loan to a small businessman in the area (A. 249). Prudential holds $36 million in C&I loans in the area, representing some 989 loans to businessmen. Based on Prudential's share of the insurance market, it is estimated that $255 million in loans are held by insurance companies in the SMSA. Of Prudential's portfolio of such business loans, 15.7% are between $100,000 and $200,000 (A. 315-16).

Insurance companies are also recognized by bankers as one of the greatest competitors for mortgage loans (A. 73, 160, 475; Pl. Ex. 52; R. 414, at p. 128). Most of the mortgage loans taken by insurance companies are direct placement loans, but there are many instances where the insurance company will pay off the mortgage held by a bank (A. 73, R. 966). In the SMSA Prudential has $11 million in mortgages. Based on its share, it is estimated that the insurance companies hold $70 million in mortgages in the area (A. 315). When the mortgage loans and C&I loans of the life insurance industry in the SMSA are aggregated, the investment of the industry in the area is in the order of $325 million (A. 316). In addition, the insurance industry is a very strong competitor for the pension fund business; banks, insurance companies and equity funds all seek the same money from the employer with a pension fund (A. 298-300).

Credit Unions

Credit unions have been recognized by commercial bankers as a significant factor in the competition for savings and for loans (A. 61, 159, 250-51, 253, 475; Pl. Ex. 52; R. 414, at pp. 125-26, 129; A. 494). Credit unions in the area include the Ingersoll-Rand Federal Credit Union (hereinafter F.C.U.) which started over a year ago and already has 1,125 members, assets of $243,662, deposit shares of $237,380 and outstanding loans amounting to $223,063; the Nytronics Employees F.C.U. which has been in operation for 20 years and which has 329 members, $140,822 in assets, $131,380 in shares and $45,585 in loans; Baker Chemical F.C.U. which opened about five years ago and has 437 members, $200,197 in assets, $176,928 in shares and $179,583 in loans; and the Riegel Employees F.C.U. with 1,334 members, $898,977 in assets, $835,198 in shares and $574,186 in loans (A. 252-53; Def. Ex. 59; R.

1261; A. 829). These credit unions engage both in making loans to members and in providing a convenient opportunity for regular savings. The total credit union membership in the SMSA is 14,292 with total assets of $7,099,738 and total loans of $4,689,606 (Def. Ex. 59; R. 1261; A. 829).

Finance Companies

Evolution in the financial markets is changing the role played by the finance companies and the banks. As Homer Kripke, Professor of Law at N.Y.U. and an expert on the activities of finance companies, testified, these companies originally organized because commercial banks would not lend for the purpose of purchasing machinery or financing receivables (A. 342). The finance companies were early entrants in the field of automobile financing and the financing of consumer appliances, radios and television (A. 342-43). But banks have recently entered the field of consumer loans in earnest; they have actively solicited the loans formerly made by finance companies, and it is now estimated that 90% of those individuals seeking loans at a finance company qualify for loans at a commercial bank (A. 91, 159, 408-09, R. 1168). The finance companies themselves have been most aggressive in the area of personal loans, installment loans and automobile loans (A. 159, 475; Pl. Ex. 52; R. 414, A. 610-11). As part of this movement, commercial banks have been recruiting the trained personnel of finance companies either through the absorption of finance companies or by direct employment. The employment of Anthony Stillo is an example of the recruitment of finance company personnel (A. 343-44, 350, 408).

While finance companies may previously have obtained their money for lending purposes from commercial banks,

now they get less than 10% of their funds from that source and instead sell their certificates to other financial intermediaries and corporations, either directly or indirectly through commercial paper brokers (R. 387, A. 301, A. 346-48). A large corporation might buy a short-term note from a finance company for any sum not immediately required and thus economize on its demand deposit balances outstanding (A. 347). Large corporate pension funds also hold the term paper of finance companies (A. 346). By selling certificates to corporations and maintaining flexibility as to the term of the note, finance companies have obtained large amounts of corporate funds, thereby reducing the amounts kept in demand and time deposits and forcing the banks to issue interest-bearing certificates of deposit to recoup their losses of non-interest paying demand deposits (A. 300-01, 348-49). The few loans made by defendant banks to other financial institutions show that they themselves do not in any way share the competitive leverage that large city banks may have had at one time in lending to these institutions (Pl. Ex. 84; R. 1526, A. 653; Pl. Ex. 11; R. 85). As metropolitan commercial banks have become more aggressive competitors in consumer financing in the large cities, the finance companies have shifted their activities into areas where the local banks are not satisfying the demand for this kind of service, to areas like the Lehigh Valley (A. 349).

The direct competition between commercial banks and finance companies has thus been recognized as an important factor by commercial bankers (A. 61, 159, 475; Pl. Ex. 52; R. 414, at pp. 125-6). Finance companies have been very active in the commercial and industrial loan area in the financing of inventory and receivables (A. 239-40, 343, 494-95). Finance companies, some of which are associated with manufacturers, are actively floor planning

dealers in automobiles and appliances in the Lehigh Valley (A. 109, 249, 412, 418, 420, 429, 437, 444-45, 476, R. 1310). Finance companies have also taken equipment loans and have financed machinery in the area (A. 352, 487; R. 1073).

Finance companies active in the area include Ford Motor Credit Corporation, G.M.A.C., General Electric Credit Corp., General Acceptance Corporation with headquarters in Allenton and C.I.T. (A. 109, 249, 412, 418, 420, 429, 437, 444-45, 476; R. 1310). G.M.A.C. finances the Phillipsburg Oldsmobile dealer (A. 437). Small loan companies also have many offices which make their services conveniently available (A. 344-45).

The district court was impressed with the competition provided by finance companies in the lending market (A. 698). It found evidence of borrower necessity resulting in the finance companies with their higher rates doing the floor planning for local dealers, both in automobiles and appliances (*Id.*). The provision of a larger lending limit allowing the resulting bank to fulfill the needs of these local businessmen was found to be an "urgent need" (*Id.*) and one that would be "ultimately beneficial" (*Id.*) to the individual consumer in financing the purchase of goods. (This aspect will be more fully considered when the "convenience and needs" redounding to the benefit of the community are discussed.)

Mutual Funds and the Stock Market

The competition for the savings dollar afforded by stockbrokers and mutual fund salesmen has been recognized as a competitive factor by commercial bankers and the representatives of other financial intermediaries directly competing with commercial banks (R. 335-6, A. 61, 71-72, 107-08, 158-59, 238, 250-51, 254, 288, 297-99, 448-49, 459, 475-76; Pl. Ex. 52; R. 416, A. 611). While the

offices of stockbrokers are centered in Allentown and Easton, they solicit business throughout the trading area by telephone calls made to Washington, Alpha, and Phillipsburg, New Jersey, and elsewhere (R. 295; A. 288, 351-52). Mutual fund salesmen are active in the SMSA advertising locally in the newspapers and through brokers (R. 335, A. 254, 288, 459). The effect of solicitation by mutual fund salesmen from Allentown and Easton is felt by persons living in Nazareth, Pennsylvania (R. 335). In areas as small as that of Washington, New Jersey, there are three mutual fund salesmen canvassing the area (A. 71). Banks, such as the Nazareth National Bank and Trust Co., provide a service for their customers seeking to buy and sell securities, placing orders for their customers through their own brokers (R. 336, A. 158-59). Sales by brokers, like the consumer loans made by banks and finance companies, are no longer restricted to a limited clientele and are made to the average household head (A. 158-59). Commercial banks in the trading area are constantly experiencing withdrawals from deposit accounts for the purpose of purchasing stock shares and have been able to trace withdrawals directly to the purchase of mutual funds (A. 61, 158-59, 254, 393, 448-49; R. 307). To protect themselves from inroads of mutual funds, other financial intermediaries such as insurance companies have, through subsidiaries or new departments, introduced new products appealing to the mutual fund buyer seeking a hedge against inflation (A. 107-08, 297-99).

Department Store Operators

Commercial bankers consider consumer credit operations as competitors of banking institutions (A. 109, 449). Besides extending credit to their customers through charge accounts and providing them with a convenient outlet for

the purchase of money orders, department stores provide extensive check-cashing services, both personal and payroll, which rival banks in the volume of business (A. 374, 487-88; Pl. Ex. 52; R. 414, at pp. 136-7). Falk's department stores cash more checks than are cashed, all told, in the three Phillipsburg banks (A. 488). They issue money orders and American Express checks through some of their outlets (A. 488). Department store credit arrangements and other credit card operations are a significant factor in the consumer credit market (A. 494). Through the use of department store credit cards, individuals can economize on their use of checks and reduce the average balance of their demand deposit accounts (*Id.*).

Other Competitors

In the mortgage market a substantial number of loans are taken by private lenders and these lenders are active in the trading area delineated by defendants (A. 433, 476). Pension funds are also significant competitors for the savings dollar, with banks, insurance companies and the federal government contending for the dollar invested in these funds (A. 238, 297, 299, 393-94, 491). Finally, the federal Government, through its advertisement of savings bonds and other securities, remains a substantial competitor for the savings dollar (A. 288, 299, 448-49). Judicial notice may be taken that commercial banks, savings banks and savings and loan associations sell at each of their offices various notes and obligations of the federal government to their own customers.

The role played by each of these competitors has been capsulized in Exhibits D-1 (Def. Ex. 1; R. 776a; A. 781), D-2 (Def. Ex. 2; R. 776; A. 783) and D-3 (Def. Ex. 3; R. 776, A. 787), showing, respectively, the financial assets

held by households in the United States, one-to four-family mortgages by holder, and consumer credit by holder. In the United States, commercial banks through time and demand deposits hold approximately 14.5% of the total assets; savings institutions, including savings banks, savings and loans and credit unions, hold 12.07%, and life insurance reserves represent another 7.5% Def. Ex. 1; R. 776; A. 781). The rest is held by other intermediaries. In the mortgage area, banks have 14.78%; savings and loan's, 43.71%; mutual savings banks, 14.18% and life insurance companies, 12.71% (Def. Ex. 2; R. 776; A. 783). In the consumer credit area, commercial banks hold 41.43% while credit unions have more than 9% and finance companies over 24% (Def. Ex. 3; R. 776; A. 787). Based on various criteria (including the proportionate population in urban areas, median income, proportionate population in owner-occupied housing and proportionate amounts in bank deposits), it was determined by Nevins Baxter, defendants' economist, that the ABE-SMSA was a representative area of the country (Def. Ex. 6; R. 776; A. 791) and that other factors, such as the percentage of assets in commercial banks, the percentage of mortgages taken by commercial banks and the percentage of consumer credit held, would approximate the national averages (A. 495-96). Defendants claim herein that this approach based on the consistency of various factors in the ABE-SMSA with the national figures, remains valid, and that the Court can derive figures as to the total savings flow in the area and the distribution of savings and loans among various financial institutions congruent with the national distribution figures.

The District Court's Opinion As To Product Market

The district court found that "in many of the banking services offered by the defendant banks there is very viru-

lent and widespread competition from other banks and other financial institutions." (A. 670). Because there were so many sources for home mortgages, the court found that the merger would have no appreciable affect on any potential mortgagor. The court found "virulent and widespread competition for the savings dollar, conventional mortgage loans, individual and dealer automobile financing, dealer and individual financing of appliances, equipment and commercial inventory." (A. 673) Competitors for the savings dollar were found in the savings and loans, pension funds, mutual funds, insurance companies and government bonds (A. 673). Savings and loans and insurance companies were found to compete for mortgages, while finance companies, the court determined, competed for dealer and individual automobile financing and for financing of automobiles and equipment (A. 673).

The court sought to "single out those products and services which are not only unique to commercial banking, but also those where the banks in the relevant geographic market are directly and effectively competitive." (A. 674) Using this approach the district court eliminated trust services (neither bank is a factor in the trust business), real estate mortgage loans, automobile dealer financing, large-scale commercial inventory financing and commercial and industrial loans in excess of $100,000 (A. 675). Since the lending limit at Phillipsburg National Bank is $131,468 and the limit at Second National is $120,326, the court recognized that they could not separately compete for these commercial loans (A. 670). As will be noted later, it is in those areas excluded from the line of commerce and in which neither bank is now a factor, that the merger will peculiarly result in benefits to the public and allow the merged bank to serve the convenience and needs of the community.

Competitive Effect

In measuring anti-competitive effect the district court looked to the traditional guidelines employed in other section 7 cases. It found that "there is no historical trend toward concentration in the banking industry in this market and there is no present concentration." (A. 685) In the geogrgaphic area chosen by the district court Phillipsburg National Bank was found to be the seventh largest; Second National Bank, the 13th. After merger, the resulting bank would be the fifth largest with 6.76% of the total assets of commercial banks and 7.07% of total deposits. The actual measuring was performed, using statistics related solely to commercial banks headquartered in the geographic market. No discount was applied to reflect either the influence of outside banks or the activities of other financial intermediaries (A. 685-86). Nor was any reduction made to reflect the assets and deposits of the Girard Trust branch in Riegelsville. The branch figures for Girard were unavailable (A. 685). Without any trend toward concentration or the presence of any undue concentration, the Court found no presumptive inference of anti-competitive effect (A. 688). On the record, the Court found "that plaintiff has failed to sustain its burden of proof to establish by a preponderance of the evidence that the merger would have any measurable anti-competitive effect." (A. 69).

Convenience and Needs

Managerial Resources

Harry Pursel, president of Second National, is now 82 years old and would like to retire (Pl. Ex. 54; R. 414, A. 660). He became president 14 years ago at the age of 68. His predecessor retired at the age of 80 (Pl. Ex. 54; R. 414, A. 664). In his deposition testimony Mr. Pursel stated:

> We need younger personnel, officers. It is pretty hard to get male officers and something will probably have to be done about having a change in management. At my age I would like to retire.
>
> We have Lester Pursell and Dick Daubert who are coming along (Pl. Ex. 84; R. 1526, A. 660).

Lester Pursell is himself 74 and would like to retire (Pl. Ex. 84; R. 1526, A. 660-61). The bank needs younger men to replace its aging management (A. 442; Pl. Ex. 84; R. 1526, A. 660).

In 1965, William T. Greenley, a senior vice president of Fidelity Union in Newark, a correspondent of Second National's, was consulted about the latter's condition (A. 151-52). He advised the bank that because of the advanced age of the senior officers, the practice of soliciting outside opinions as to mortgage risks and the lack of experience in investments and trusts, the bank would require a mortgage specialist, a trust officer and a general operations officer (A. 152-53). He advised then that the bank could expect to pay a yearly salary to the mortgage officer of $9,000 to $14,000; that the figure for the general operations man was $10,000 to $14,000, and that the trust officer would command $12,000 to $15,000. During this two-hour discussion of the problems of the bank, Second National Bank specifically asked Mr. Greenley to see if he could find anybody willing to work for the Bank in a management capacity. Mr. Greenley kept a constant lookout for better than a year, reviewed the availability of members of his own bank's staff, and took Mr. Wilson, now assistant vice president at Fidelity Union, to Phillipsburg with the thought that he might accept a position, and that he would eventually become president (A. 153-54, 169-70, 406, 438-39). Mr. Wilson went

to Phillipsburg with Mr. Greenley on several occasions and looked the bank over. Told that the salary range was $20,000, he showed no interest (A. 169-70).

Individual directors, like Mr. Armstrong, have also attempted to recruit management. In July of 1967, Mr. Armstrong sought to employ a vice president of the Chemical Bank New York Trust Company or to have him refer a likely candidate. These efforts were to no avail because the New York banker wanted at least $30,000 a year with other benefits (A. 406-08). The banker referred to has not as yet referred anyone (A. 407). Mr. Seiss, another director of Second National, has attempted to attract new officers and is still seeking someone (A. 406).

Dr. Nevins Baxter, from his position at the Wharton School, was aware of these problems of small banks in attracting personnel:

> I know that there appears to be, from talking to students, a reluctance very often to go with a small firm because they believe that even if the salary were competitive the opportunities might not be as competitive (A. 507).

Baxter concluded that:

> . . . the smaller the institution the harder it is to give a guy who has had an education and a foundation, to give him enough of an opportunity to make it really attractive for him (A. 507).

Lester Pursell recounted the efforts of Second National in seeking personnel:

> We have promotions through the ranks but within the last few years it has been hard to get any

> We need younger personnel, officers. It is pretty hard to get male officers and something will probably have to be done about having a change in management. At my age I would like to retire.
>
> We have Lester Pursell and Dick Daubert who are coming along (Pl. Ex. 84; R. 1526, A. 660).

Lester Pursell is himself 74 and would like to retire (Pl. Ex. 84; R. 1526, A. 660-61). The bank needs younger men to replace its aging management (A. 442; Pl. Ex. 84; R. 1526, A. 660).

In 1965, William T. Greenley, a senior vice president of Fidelity Union in Newark, a correspondent of Second National's, was consulted about the latter's condition (A. 151-52). He advised the bank that because of the advanced age of the senior officers, the practice of soliciting outside opinions as to mortgage risks and the lack of experience in investments and trusts, the bank would require a mortgage specialist, a trust officer and a general operations officer (A. 152-53). He advised then that the bank could expect to pay a yearly salary to the mortgage officer of $9,000 to $14,000; that the figure for the general operations man was $10,000 to $14,000, and that the trust officer would command $12,000 to $15,000. During this two-hour discussion of the problems of the bank, Second National Bank specifically asked Mr. Greenley to see if he could find anybody willing to work for the Bank in a management capacity. Mr. Greenley kept a constant lookout for better than a year, reviewed the availability of members of his own bank's staff, and took Mr. Wilson, now assistant vice president at Fidelity Union, to Phillipsburg with the thought that he might accept a position, and that he would eventually become president (A. 153-54, 169-70, 406, 438-39). Mr. Wilson went

to Phillipsburg with Mr. Greenley on several occasions and looked the bank over. Told that the salary range was $20,000, he showed no interest (A. 169-70).

Individual directors, like Mr. Armstrong, have also attempted to recruit management. In July of 1967, Mr. Armstrong sought to employ a vice president of the Chemical Bank New York Trust Company or to have him refer a likely candidate. These efforts were to no avail because the New York banker wanted at least $30,000 a year with other benefits (A. 406-08). The banker referred to has not as yet referred anyone (A. 407). Mr. Seiss, another director of Second National, has attempted to attract new officers and is still seeking someone (A. 406).

Dr. Nevins Baxter, from his position at the Wharton School, was aware of these problems of small banks in attracting personnel:

> I know that there appears to be, from talking to students, a reluctance very often to go with a small firm because they believe that even if the salary were competitive the opportunities might not be as competitive (A. 507).

Baxter concluded that:

> . . . the smaller the institution the harder it is to give a guy who has had an education and a foundation, to give him enough of an opportunity to make it really attractive for him (A. 507).

Lester Pursell recounted the efforts of Second National in seeking personnel:

> We have promotions through the ranks but within the last few years it has been hard to get any

> male help to even get interested in a job here, which we have been forced to take females and there are not too many of those around.
>
> We have tried to keep in touch with the high schools and business colleges without too much success as far as going out and picking out people for an officer, which is pretty high for our institution (Pl. Ex. 84; R. 1526, A. 654).

He later agreed with counsel for plaintiff that the salaries of officer personnel would be "prohibitive." (Pl. Ex. 84; R. 1526, at p. 289). He stated that from his observation of the letters sent by officer employment services that "we couldn't even touch those salaries . . ." (Pl. Ex. 84; R. 1526, at p. 289).

Phillipsburg National's president, Harold J. Curry, is 72 and he, too, would like to retire (A. 264, 321; R. 988). The executive vice president is almost 60, while Joseph Varga, vice president, is 41 (A. 264). A management gap, as asserted by the defendants, exists in both banks.

Salaries of Present Officers

To place the matter in proper focus, it is necessary to look at the salaries of the present officers. In 1967, the president of Phillipsburg National received in salary (including bonus) and director's fees $19,134; the present executive vice president received $12,371; and the vice president received $8,830. At Second National the corresponding earnings were president, $11,544; executive vice president, $12,563; and vice president, $9,346 (Int. Ex. 28; R. 1439; A. 865). The salary scale at both banks, compared with banks of like size, is much below the scale elsewhere (Pl. Ex. 53; R. 414, A. 645).

Intention to Hire Specialists

Once merged, the resulting bank intends to hire specialized officers and to departmentalize its operations (A. 265; Pl. Ex. 53; R. 414, A. 651). It intends to hire a mortgage specialist, a commercial and industrial loan officer and a trust officer. With this proposal in mind, the costs of these officers and those required by Second National must be considered.

Cost of Required Officers

The cost of a new president would range from $25,000 to $30,000, although it might be less for a small bank. The cost of a trust officer would range from $15,000 to $20,000, that of a mortgage officer from $15,000 to $22,000, and of a commercial and industrial lending officer from $18,000 to $25,000 (A. 112-13, 153, 475, 536-37, R. 1160; Pl. Ex. 53; R. 414, at p. 240). Defendants have been advised of the likely costs of these officers through specialized services operating as conduits for the hiring of such men and through discussions with other bankers. The salaries quoted by these services were out of reach and the banks could not even think of attracting these experienced men (Pl. Ex. 84; R. 1526, at pp. 289-90; Pl. Ex. 53; R. 414, at pp. 234-5). Adding to the cost of these specialists is the fact that the introduction of these men into the operation would require the bank to make a general salary adjustment and to extend any enhanced fringe benefits to other employees (A. 154-55, 168, 537, 541; Pl. Ex. 54; R. 414, at p. 16; Pl. Ex. 53; R. 414, at pp. 217-8, A. 645).

Factors Making Recruitment Impossible

The deterioration of the Town of Phillipsburg makes even more difficult the problem of recruitment of officer

personnel (A. 153, 169, R. 1453). For men of this caliber the town is not attractive.

The small size of defendant banks also makes recruitment extremely difficult because it makes evident both the inability of defendant banks to meet future salary increases and their inability to offer opportunities for advancement comparable to those of larger banks (A. 173, 284, 392, 451-52, 506-07, R. 341; Pl. Ex. 52; R. 414, at p. 134, A. 612). The fringe benefits now offered by small banks like defendants' simply do not compare with those offered by city banks in Philadelphia and New York and, as Mr. Greenley noted, this adds to the problem of recruitment (A. 170). The physical and capital limitations, as discussed later, also make the hiring of these specialists impossible.

The Three Specialists

To meet the competition of other banks armed with these specialists, it will not suffice for either of defendant banks to hire one specialist; the resulting bank must hire all three if it is to hope to protect itself from the inroads of larger banks (A. 540-41). The problem which neither of these small banks can solve alone has become acute with the entry of large Newark or other city banks into the trading area (Int. Ex. 30; A. 581; A. 871).

Impossibility of Hiring Without Merger

The salaries of the required officers and the associated upgrading of other employees' salaries make it impossible for Second National or Phillipsburg National alone to hire the three specialists (A. 265, 285, 405-06, 439, A. 442, 483, 537-38; R. 876, 880, 1306; Pl. Ex. 53; R. 414, at pp. 217-8, 244-5).

Plaintiff's counsel inquired of William J. Kinnamon, president of Hunterdon County National, what reasons supported his conclusions that the defendant banks, unlike his own, could not rely on internal growth to obtain these officers.

> A. You see, we started this program in 1946, seeing the handwriting on the wall, and we started out four new branches where they were just needed, because we saw this thing was coming, the reduction of earnings per dollar. These banks have waited too long to try to make it. I don't think they would make it by themselves. I would certainly hate to have to come in there and try that.
>
> Q. You don't feel that aggressive management can be found to move these banks along. A. Not if you paid them the entire net earnings of that bank, frankly, and with what they would have to put out in addition for other expenses to make the facilities that that fellow would have a chance to go—and he couldn't do it. That one person couldn't. He wouldn't have a chance to go with it. It just isn't in the wood with what stuff will produce today. For a while he had cheap money and not much expense. Now we have got very dear money and very high expense so the squeeze is actually a little tighter (A. 483).

Mr. Denton, of the First National State in Newark, felt that growth from within would be "extremely difficult" (A. 385). He described the future as "rather glum." (A. 384).

Charles Lewis, an assistant vice president in the correspondent bank department of the First Pennsylvania Bank and Trust Company in Philadelphia, when asked

about the minimum size required to justify hiring these three officers, stated that it required a bank with total footings of $35 million to $40 million (A. 537-38), and that neither bank could acquire the required talent alone (A. 538-39).

The Trust Officer

There is no full-time trust officer in Warren County (A. 281). Small banks in the area do not have significant amounts of trust business. As is shown in GI-4, Phillipsburg National had trust assets of only $2,331,000, or .82% of the total in the ABE-SMSA; Second National ranked last in the SMSA and had assets of $125,000, or .04% of the total (Int. Ex. 4; R. 1438; A. 838). Some small banks try to discourage this business and do not actively solicit trust work (R. 193, 276; Def. Ex. 49; R. 974, at p. 157).

Despite this attitude, many corporations in the area are interested, as the district court found, in having a bank take care of their corporate pension funds. (R. 218, A. 156, 265-66, 291, 354, 358, 390, 439, 486, 491; Def. Ex. 49; R. 974, at p. 157). Among commercial bankers, representatives of other financial intermediaries and local businessmen, there was almost universal agreement as to the existence of both a demand and a need for trust services in the area (R. 210, 1331, A. 69, 89-90 156, 166, 265-66, 291, 315, 325, 329-30, 354, 358, 374-75, 381, 390, 439, 539; Def. Ex. 60; R. 1333 at p. 175; Def. Ex. 49; R. 974, at pp. 157, 189-90).

For either bank separately to hire a trust officer would be impossible, not only because of the salary range of $15,000-$20,000 a year, but also because the prospective size of the single bank's trust department would not justify the employment of such an officer. (Pl. Ex. 84; R.

1526, at pp. 274, 288-9). Because of the length of time it takes to make a trust department profitable and the realization by trust officers that banks will often seek to terminate their contracts after the first few unprofitable years, it is impossible to attract a trust officer to banks like Phillipsburg National and Second National, which have negligible trust assets (A. 162-63, 172, 325, R. 398, 987).

The employment of a full-time trust officer by the resulting bank would be of substantial benefit to the community as is evidenced both by the restrictive policy of small banks in the face of a demonstrated need for trust services and an increasing demand for trust services. (R. 193, A. 69, 92, 160, 438-39, 446; Pl. Ex. 52; R. 414, at p. 137; Def. Ex. 49; R. 974, at p. 157). Plaintiff's economist claimed there were many fine substitutes for trust services, but he also admitted that the community would benefit if more alternatives for the provision of this service were available (A. 186-187).

The Mortgage Loan Officer

A mortgage loan specialist would appraise real property and develop and service the mortgage business of the bank. This activity now consumes much of the time of other officers and directors. A specialist would be aware of the value of various structural improvements; he would be quick to spot deficiencies, and he would, in any case, represent an improvement over the prevalent practice of appraisal by directors (R. 277, A. 152, 267-68; Pl. Ex. 53; R. 414, at pp. 217-8). Estimates as to the cost of a mortgage officer run from $15,000 to $16,000 annual salary, with the cost rising to $22,000 for an experienced man (A. 152-53, 475, 537, R. 1447). A mortgage loan specialist would allow the resulting bank to better serve the community in its handling of mortgages and, by freeing other officers, would indirectly give the bank opportunity to attend to other services (A. 267-68; Pl. Ex. 53; R. 414, at pp. 217-18).

The Commercial and Industrial Loan Officer

No bank in Warren County has a C & I lending specialist (R. 880). The C & I loans in Phillipsburg National, as of December 30, 1967, amounted to only $2,375,000; those in Second National totaled $1,300,000. (Int. Ex. 4; R. 438; A. 838). Even these figures may be overstated because of the practice of including municipal bond holdings and real estate within that category (A. 750). The lending limit of Phillipsburg National, based on 10% of capital, surplus and undivided profits was $120,326 at year-end 1967; that of Second National was $131,468 (Pl. Ex. 6; R. 85; A. 713).

The need for higher lending limits in the area, for increased capital investment in the area, and for a C & I specialist are all part of the same problem. To obtain a C & I specialist with experience and knowledge of the various credit arrangements would cost the bank between $18,000 and $25,000 a year for salary alone (A. 113, 475, 537). For each bank individually to hire its own C & I officer is impossible, not only because of the cost involved, but also because a C & I specialist would not be useful to the community or the bank if he lacked the competitive tool of an expanded lending limit, and if the total amount allocated to C & I loans in the bank's portfolio was insufficient to allow him to develop the field properly (A. 111, R. 837-8; Def. Ex. 60; R. 1333, at pp. 170-1; Pl. Ex. 53; R. 414, at pp. 223, 245, A. 639-40; Pl. Ex. 84; R. 1526, at pp. 259-60, A. 656). Without an increased lending limit, the bank would have to engage in a participation of the loan, or it would have to decline credit (Def. Ex. 60; R. 1333, at pp. 170-1).

The Increased Lending Limit

Phillipsburg National averages 25 requests over its lending limit annually. Second National averages 10 to

12. The increasing number of these requests shows the insufficiency of the present limits (Pl. Ex. 7; R. 85; Def. Ex. 60; R. 1333, at p. 166; Pl. Ex. 53; R. 414, A. 638, A. 261, 267). Many persons have refrained from seeking a loan at defendant banks because they are already aware of those limits (Pl. Ex. 84; R. 1526, at p. 258).

There has been a general increase in the loan amount requested. Many businessmen in the area are reaching a point in their operations where they will need loans ranging between $100,000 and $250,000, more than either bank can provide but within the limits of the merged bank. (See A. 249, 277, 303, 315-316, 353, 375, 429; R. 865, 997 1020).

The need for readily available credit is one of peculiar concern to general contractors. Contractors who must pre-qualify to bid on contracts with the state and federal government need readily available lines of credit (A. 322-25; Def. Ex. 49; R. 974, A. 620-21). A bank with its problems of capital allocation can only extend so many lines of credit, because many lines may become simultaneously active (A. 161-62). Since large banks with higher lending limits cannot extend this limit to all borrowers, there is a need for another bank with limits of over $200,000 (A. 162). For farmers and businessmen seeking to purchase equipment and for dealers carrying high-value items like color TV's and stereos, there has been a general increase in the amount requested (A. 148-49, 249-50, 270-71, 276-77, 481-82). The larger limit of the resulting bank would benefit automobile dealers and others; as the district court noted, they could obtain a lower rate than they now pay to a finance company (A. 698).

Benefits Resulting from Hiring a C & I Specialist

The presence of a trained officer specializing in C & I loans makes it easier to obtain participation by corre-

spondents and other banks. The correspondent will have confidence that the officer has made an adequate examination of the borrower's credit and that he is familiar with the business' prospects (A. 172-73, 383). A knowledge able C & I officer could provide advice to businessmen in the area as to alternative methods or procedures for borrowing money and aid them in the pursuit of ventures requiring ready access to capital (A. 330-31). With specialists who are more aggressive lending officers, the C & I rate charged by the bank would decrease as these officers sought to extend its business (A. 504). As a result of the merger, the bank would be able to serve a broader category of risks in loans; the knowledgeability of its specialized personnel would allow it to take risks it cannot now consider; and the adoption of a more aggressive policy would lead it to offer different maturities and terms not now available at defendant banks (A. 156, 160, R. 837-8, 1469-70).

Problems with Participations

It is often difficult, as Mr. Greenley noted, to find participants when money is tight. The correspondent often wants to be paid back first and will turn down loans involving unseasoned businesses or those requiring supervision (A. 157-58, 272-73). Because participants lack knowledge of the business seeking a loan, they may be slow to approve it, and they may turn it down (A. 249, 352-53). For the lead bank and the customer, participation means paperwork (A. 271). For these and other reasons, some customers of Phillipsburg National feel that such loans are unsatisfactory (R. 1191, A. 489; Def. Ex. 49; R. 974, at p. 173).

Benefits Resulting from Increased Lending Limit

The ability to floor plan dealers is one of the expected benefits of the merger. For the bank it will result in

economies associated with the financing of indirect dealer paper (Def. Ex. 60; R. 1333, at pp. 133-4). The bank will be able with more capital to have larger amounts tied up for longer periods of time (A. 157). The need of the resulting bank to lend a greater amount of funds, and its ability to do so with an increased lending limit, will probably result in a decrease in the C & I loan rate for small businessmen (R. 1313-4, 1469-70, A. 504).

Bankers and small businessmen recognize the advantage of a larger lending limit for the community since it would as a result of this merger, enhance the competition for loans between $100,000 and $200,000, allow the resulting bank to handle more loans without participating with correspondents, and allow the bank to continue to fulfill the needs of these businessmen whose lending requirements are expanding beyond the present limits (A. 143-44, 392-93, 468, 486-87, 502-03; R. 560, 1070, 1129; Pl. Ex. 53, R. 414, A. 637-38; Pl. Ex. 52; R. 414 at p. 148; Def. Ex. 49; R. 974, at pp. 157, 165, 173). The increased lending limit will prevent the flow of funds to the big cities outside the trading area. As it now stands, a businessman obtaining a loan from a large city bank must maintain a compensating balance there both during the period of the loan and often after its expiration. As a result, these funds are effectively removed from the local area and cannot be used by the local banks to make loans to other local busimen (A. 528-29; Pl. Ex. 52; R. 414, at p. 136).

Unless these small banks are allowed, through this merger, to stem the tide of money flowing out of the community, they will continue to fall behind in their service capacity, their ability to serve the growing needs of the community. These small banks will continue to grow, but they will fall further and further behind the large city banks siphoning funds from local areas like these

(A. 528-29, Pl. Ex. 52; R. 414, at p. 136). The future of the small bank, as Mr. Denton testified, is "rather glum" (A. 384).

Impossibility of Specializing Without Merger

The prospective size of the departments deemed necessary by the defendant banks in order to hire specialists after the merger, establishes that it is impossible for either bank to acomplish this goal alone (Def. Ex. 60; A. 1333, at pp. 130, 170; Pl. Ex. 84; R. 1526, at pp. 259-60, 266, A. 655-56). Given these problems of the cost of salaries, the size of departments deemed necessary, and the reduction in the differential between earnings and expenses, it is impossible for the two banks to develop these management personnel from within (A. 384-85, 443-44, 483, 540; Pl. Ex. 53; A. 414, at pp. 245-7). All the benefits expected to flow from hiring specialists and increasing the lending limit are a direct result of the merger; all of these benefits can only be achieved through merger.

Benefit from Hiring Specialized Officers

Commercial bankers, experts in banking, and small businessmen agree as to the importance of the service which specialized officers can provide the community by serving the customer at his point of business, by advising him of various financial alternatives and by learning more about his business through visits to various plant sites (A. 142-43, 155-56, 264-65, 330-31, 358-60, 386, 391-92, 461-62, 473-74, 500-01; R. 1276, 1330; Pl. Ex. 53; R. 414, at p. 249).

Increased Competition for Modern Banking Services

Many of the services to be provided are relatively unavailable in the area. It is hoped that the provision of these services by the merged bank will spur others to

engage in these areas. Asked what the effect of the merger of these two banks would be in the area, Mr. Cooper, formerly of the Union Bank in Bethlehem, stated:

> A. My answer is predicated on knowing exactly what exists in the area. I know Easton, Warren County like I know the back of my hand. I am not trying to set myself up as anything except to say to you in answer to your question it has to improve competition in the area. It couldn't do anything but improve the competition.
>
> The Court: Why do you say that?
>
> A. Because—the banks in that area have not concerned themselves about taking modern services and facilities to the community. I am sorry I have to say that.
>
> Q. What could they do as a result of this merger? A. Expand their services to an area that has been waiting for it for a long time and can see it (A. 461).

Because this merger will stimulate other banks to offer more modern services and facilities to the community, which they have not offered in the past, the convenience and needs which will redound to the benefit of those in the area include not only those provided by the resulting bank, but also all those other services which competing banks will provide in response to the competitive posture taken by the resulting bank (A. 391, 461-62, 477).

Other Benefits

Automation and Economies of Scale

A $35 million to $40 million bank could justify and make use of the services of a computer (R. 1124-25).

Defendant banks do intend to obtain computer services after merger (Def. Ex. 60; R. 1333, at p. 122; Pl. Ex. 84; R. 1526, at pp. 278-9; A. 268). Furman Denton, a correspondent banker, said with regard to the computer, ". . . I am not talking about a large-scale installation, but one that would adequately cover their present requirements and could be expected to handle the anticipated growth due to the development of the area." (R. 1125). Only through merger would it be feasible to employ the services of a computer. Its joint use would result in cost savings. Separately, there would be an insufficient number of accounts to justify its use (R. 1124-25, A. 381). With the computer,the bank will be able to provide better demand deposit reporting service to the customer. It will eventually be able to computerize time deposits, installment loans and mortgage loans. In time it will be able to service payroll accounts, those associated with the large demand deposit accounts of full service banks (A. 268; Def. Ex. 60; R. 1333, at p. 122).

Economies of Scale

Defendants' economic expert determined on the basis of one study that the resulting bank would enjoy economies of scale amounting to some $50,000 per year. Another study, using the functional cost analysis approach and employing the conservative assumption that the relative efficiencies of each of the merging banks before merger were equal (conservative because Phillipsburg National Bank could be expected to be relatively more efficient than Second National) yielded a savings of $22,000 per year (A. 504-06, 525-28). These specific economies of scale, in addition to other general economies, would aid the bank in allowing it to channel the savings into the development of specialized departments and to expand the number of branches (A. 380, 447-48, 504-06, 525-28).

Operation of Five Present Offices

With the resulting bank continuing to operate all five of the offices now in existence, customers could patronize any one of the offices, whether it is close to the customer's home or his shopping or working place (Def. Ex. 60; R. 1333; at pp. 182-3; Pl. Ex. 84; R. 1526, at pp. 277-78). With five bank office alternatives, the customers could be expected to distribute their business among them, thus reducing the waiting time at individual teller windows (A. 440).

New Branches

Consideration has been given to opening a new branch after merger (R. 799-800, 850, 884, A. 263). A merged bank would be better able to incur the cost of a new branch, given its present capital structure and current earnings (Pl. Ex. 54; R. 414,at p. 17; Pl. Ex. 53; R. 414, at pp. 222-3; R. 1235, 1330). With the economies of scale that can be expected to result from the merger and the increased revenue which the employment of specialists can be expected to produce, the resulting bank can obtain a sufficient differential between its expenses and earnings to justify taking the further step of investing in a new branch (A. 155, 263, 441, 506, 527-28; A. 799-800, 850, 884, 1330; Pl. Ex. 54; R. 414, at p. 17; Pl. Ex. 53; R. 414, at pp. 222-3). Additional branches would, of course, add to the convenience of the public in the area.

The District Court Opinion on Conveniences and Needs

The District Court reached two conclusions as to the service of the convenience and needs of the community:

> 1. The Court finds that there is a preponderance of evidence showing that any conceivable anti-competitive effect of the merger is clearly out-

> weighed by the effects of the transaction in meeting the needs and convenience of the community to be served (A. 699).
>
> 2. . . . even if there were *de minimis* anticompetitive effect in the narrowly drawn market proposed by the government such effect is clearly outweighed by the convenience and needs of the community to be served by the merged bank (A. 699).

These ultimate conclusions were based on a series of subordinate findings as to the services to be provided the community. The Court found that "[there] is a definite lack of competent trust service . . ." (A. 689). It found that "*very small banks* like Phillipsburg National Bank and Second National Bank do not have the financial capacity to maintain separate commercial and industrial lending departments and trust departments." (A. 689) (Emphasis added.) Looking to the growth of local commercial enterprise and the need for financial advice, the court concluded that "[another] larger bank offering these [commercial lending] services would diminish the existing inadequacy." (A. 689).

The Court also found that it would be impossible to provide these services without merger. It stated:

> The expense of highly specialized service in lending and servicing trust funds can only be incurred by banks *larger than* either Phillipsburg National Bank or Second National Bank. (A. 690) (Emphasis added.)

The problem, as the Court noted, is not merely the initial salaries, but also the need to upgrade all salaries from th president's on down and to increase the fringe benefits (A. 690). The Court concluded that these specialists "are

not easy to find" (A. 690), that they "are not likely to accept employment for a small salary or with a *very small bank*" (*Id.*). (Emphasis added.), and that it was "clear from the evidence that neither bank can afford the expense of employing well-trained specialists to head a loan and trust department." (*Id.*).

By its excerpts of the testimony of witnesses, the court showed that there was a definite need for these services in the community and that the resulting bank could be expected to serve that need.

The court also commented on the flow of funds out of the community to the detriment of the local banks and its customers. It recognized that a businessman who obtained a loan from a bank was likely to open a demand deposit account there and that, unless local loan demands could be satisfied locally, this source of funds "to stimulate industrial and commercial growth with all of its attendant benefits . . ." (A. 697) would be lost. The large city banks would siphon off the funds, leaving the local banks with the "savings bank" business they now conduct.

Introduction and Summary of Argument

In this case, the first case to come before the Court involving the merger of two small banks and the first case involving the full application by the lower court of the standards developed under the BMA '66, there are two basic questions. The first is whether the competitive realities facing these two small banks, their inability to provide the services of a full-service commercial bank and their operation in a vastly different competitive environment from large city banks, should be recognized. The second question is whether under the BMA '66 the resulting bank's service of the "convenience and needs of the community" should be viewed, as Congress intended,

in terms of a broad public interest test, and not as the Justice Department here proposes to confine it.

The product market must be viewed in a broad perspective. The areas of competitive weakness of these two banks are peculiarly those areas in which other financial institutions provide widespread and virulent competition. These two banks operate like savings banks. Their loans are principally real estate mortgages. They are presently unable to supply the full panoply of services associated with a full-service commercial bank. These two banks operate in the local market, and not in the national market. They are unlike other banks previously involved in merger cases before this Court. They are not a factor in the creation of credit. Other financial institutions operating in this local market are not dependent on these small banks for their funds and, as a result, these two small banks do not have competitive leverage in offering services to the customer.

Congress in passing the BMA '66 recognized that the competitive realities of the market must be considered and that banks face competition from mutual savings banks, savings and loans, building and loans, insurance companies, finance companies, other financial institutions and from various other agencies, including the federal government, which compete for the savings dollar and the lending dollar. Evidencing this awareness of the competitive realities of the market, Congress dropped the reference to "line of commerce" found in the Clayton Act and did not make any reference to the "business of banking" in the relevant section of the statute. This use of language and the interpretations placed on this language in Congress show that the fact finder was to be left free to determine the relevant product market. In prior bank merger cases this Court has only agreed

with the lower court that commercial banking is the relevant line in that particular geographic market, and on the basis of the record as to these particular banks. Nowhere has it said that commercial banking is the relevant product for all banks (both big and small) operating in every local area in this country.*

When the circumstances of the local market are considered, it is clear that commercial banking is not a relevant line of commerce. However, since the district court did perform its analysis in terms of commercial banking factors, there could not, in any case, be error here.

Since the evidence would have supported the delineation of a wider market area, the geographical market delineated by the district court is clearly a conservative one. Franklin Edwards, Justice's expert, based his opinion of the effect of bank mergers on SMSA's (A. 217-18). In *Philadelphia National,* which has been relied upon so heavily by the Justice Department, the Court there agreed that the relevant market was a four-county area with a population of over 3.4 million people and banks holding billions of assets. Here, by contrast, the largest market proposed by the Justice Department has a population of only 88,500, or five-ten thousandths of the total population of the United States (Def. Ex. 15, R. 776, A. 806). In defining the minimal limits of a market the Court in *Philadelphia* (374 U.S. at 459) looked to where a customer could practically turn for services. The Court there looked to the mean, "some fair intermediate delineation" (374 U.S. at 361) which avoids drawing the market too narrowly and too expansively.

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*See *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 335 (1963) and *United States* v. *Third National Bank in Nashville*, 390 U.S. 171, 182 *n.* 15 (1968).

The two narrowly drawn markets proposed by the Justice Department emphasize one extreme, they look to where a customer might obtain services if he went bent on circumscribing his movement as much as possible, they do not look to where he might practically turn. Customers, even small customers, readily and regularly traverse the bounds of these narrow markets. In this new era of banking, the automobile, banking-by-mail and credit-card banking have vastly expanded the geographical boundaries of competition. Other service industries serve a much wider area and bankers themselves consider their market to far exceed that drawn by the Justice Department.

The areas drawn by Justice are not of sufficient commercial importance to provide a meaningful measure of competitive effect. They emphasize only one narrow extreme. In amending the Clayton Act in 1950, Congress deleted "community" as a correlative reference with "trading area." Its concern was only with an "economically significant" section of the country." *Brown Shoe Company* v. *United States,* 370 U.S. 294, 320 (1962).

Neither of the trading areas proposed by Justice have economic significance. They are only a small slice of the SMSA which government agencies have already recognized as having some economic significance.

In evaluating the ways in which the resulting bank would serve the convenience and needs of the community, the district court looked not only to Phillipsburg, but also to the benefits to the whole of the area. The district court enumerated both where the need was in the community and how it could be met by this merger. Here the only question is whether convenience and needs clearly outweigh anticompetitive effect; the district court need not go further once its examination has clearly shown

that convenience and needs do outweigh any anticompetitive effect.

Since Congress intended that a broad public interest test be applied in evaluating convenience and needs, advantages both within and without the market may be considered. Likewise, benefits to many different groups may be considered in the ultimate weighing. Here, the merger will result in benefits to the public which are relatively unavailable in the area and which will therefore be of peculiar benefit to the public. An increased lending limit and a C&I specialist will allow the bank to provide an additional alternative for large commercial borrowers. By thus stemming the flow of funds out of the area in the form of compensating balances, the bank will ultimately be able to reinvest these funds in the continued growth of the area. By allowing the bank to provide trust services, also relatively unavailable in the area, the merger will result in increased competition for these services. The pro-competitive posture taken by the resulting bank will encourage other banks to provide these services which are sorely lacking in the community.

The merger will also permit the merged bank to compete effectively with the largest banks in the First District which are entering the area. If these small banks are to maintain their independent status, they require these competitive tools to resist the inroads of these large city banks. If the banks are not allowed to merge, the ultimate decision-making power as to areas of investment will remain with the large banks now capable of funneling money from the local area to the area of greatest profit.

To obtain these services there is no alternative to merger. The banks could not afford to hire the required specialists, nor could they provide the competitive tools

necessary without this merger. The banks have shown that specific efforts were made to obtain managerial personnel for Second National and that any further efforts would not be likely to succeed.

The proposal that the banks show that other mergers were unavailable is impractical and burdensome under the circumstances of this case. A merger with a large First District bank was unavailable at the revelant time, two years before the effective date of the statute creating the new district. Similarly, the immediacy of the problem faced by Second National and the conservative attitude of other area bankers shows that merger with another Warren County bank was also unavailable. As recent mergers by large First District banks have shown, several Warren County banks are now unavailable and those remaining can hope for a premium for their stock from the large city banks. If these two small banks are to maintain their independent status and to prevent the further flow of funds outside the area, they must be allowed to merge.

I. The Product Market Delineated By The District Court Is The Relevant Market For These Two Small Banks

As to each issue raised in this case, the focus must be shifted from the circumstances of the large city bank involved in all prior section 7 cases, to those of the small bank, one which cannot provide the whole panoply of services associated with a full-service commercial bank. The banks involved in this case are in absolute terms small. Relative to other banks in the geographic market, they are small. The services in which they concentrate their activity are precisely those in which other financial institutions provide widespread and virulent competition.

In claiming that commercial banking is a relevant market in this case, the Justice Department relies heavily on this Court's discussion of the line of commerce in *United States* v. *Philadelphia National Bank*, 374 U.S. 321 (1963) (hereinafter *"Philadelphia National"*) and in *United States* v. *Third National Bank in Nashville*, 390 U.S. 171 (1968) (hereinafter *"Nashville"*). In both of these cases the district court had already found on the facts that commercial banking was the relevant product market. In *Philadelphia National*, the appellees did not contest this ruling (374 U.S. at 335). In *Nashville* the Court merely agreed with the lower court's finding in a footnote attached to the Court's opinion. (390 U.S. at 182 *n.* 15)

Here, however, there was full and ample proof below that many financial institutions compete avidly for the same business sought by these two small banks. The district court fully considered this evidence in reaching its decision as to the elements of the product market. As we shall show, many dramatic changes in the market, in the statutory language of the BMA '66 and in the activities of financial institutions in this local area, required that the district court arrive at the conclusion it did.

A. The District Court used commercial banking factors to evaluate competitive effect

The Justice Department here seeks to challenge the district court's delineation of the product market. The district court made the following observations as to the competition faced by these banks:

> This competition comes in part from the banks located not only in close proximity to Phillipsburg but also from many others located a considerable distance from Phillipsburg. It also comes in substan-

> tial part from savings and loan associations, pension funds, mutual funds, government bonds, insurance companies and finance companies. Banks compete with savings and loan associations, pension funds, mutual funds, insurance companies and government bonds for the savings dollar. Hence, the bank savings account and certificate of deposit is not a unique bank service free from effective competition. Savings and loan associations and insurance companies compete with the banks for real estate mortgage loans. Finance companies compete for dealer and individual automobile financing and for financing of appliances and equipment. (A. 673).

These observations, however, did not affect the result. Even if the district court had used the product market advocated by the appellant, the result would be the same. In evaluating competitive effect, the court looked solely to commercial banking factors. The court evaluated the resulting bank's percentage of the total assets and total deposits of *commercial banks* (A. 683-85). It looked to the absence of any trend toward concentration "in the *banking industry.*" (A. 685) (emphasis added) It found that there was no present concentration in the banking industry (Id.) Looking to ease of entry into the market, the court restricted its consideration to the statutory requirements associated with commercial banks (A. 686-87). The court thus concluded that there would be no measurable anti-competitive effect and, indeed, that the effect would be procompetitive if other small banks were stimulated by the aggressive policies of the new merged bank (A. 688). If we look carefully to precisely what the court did, the accusation by Justice that commercial banking was

not considered as the product market is completely unfounded.*

B. The facts fully support the inclusion of other financial institutions in the market

The facts concerning the activities of other financial institutions in the relevant market have already been fully developed. These banks do not enjoy the competitive leverage of other commercial banks involved in prior section 7 cases. The percentage of demand deposits is low relative to that enjoyed by full service commercial banks. The percentage of commercial loans is also low. The banks simply do not provide the "cluster of services" found to mark the commercial bank in *Philadelphia National Bank, supra.* While both defendants might nominally be labelled commercial banks, and as an instance of "seller's puffing" may refer to themselves as commercial banks, they do not act as such. They are presently unable and have never been able to supply that sophisticated panoply of services which is said to distinguish a commercial bank from other institutions (Def. Ex. 17; R. 776; A. 492-93; Pl. Ex. 84; R. 1526, at pp. 283-84).

Those services said to be unique to commercial banking are peculiarly areas of weakness. They do not have large demand deposit accounts. Most of the accounts are maintained as convenience accounts by small depositors. The balance is kept small and suffices only to meet the recur-

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*The district court did not discount the percentage shares of the defendants in the market to reflect the influence of "outside" banks, or to reflect the influence of these other financial institutions found to be actively competing with defendants. These percentage shares really should be reduced to reflect the influence of "outside" banks (as was done in *Philadelphia National*) and to reflect the influence of other financial institutions.

rent monthly obligations of the customer. Phillipsburg National and Second National are small banks with many small accounts (Pl. Ex. 18; R. 85, A. 725; Pl. Ex. 22; R. 85, A. 733).

Moreover, the claim that the demand deposit is unique to commercial banks is not true in New Jersey. In *Hudson County National Bank* v. *Provident Institution for Savings,* 44 N. J. 282, 208 A. 2d 409 (1965) the New Jersey Supreme Court found that it has been "the usual custom of savings banks" to maintain checking accounts in New Jersey and that they could continue to do so under statute. Id. at 284, 208 A. 2d at 410; N.J.S.A. 17:9A-26(1).

Without large commercial loans, there can be no large compensating balances. As a result, these banks operating on the local level, and not on the national level like other banks previously before this Court are simply not a factor in the creation of credit.

The premises upon which the Court relied in *Philadelphia National* do not apply to these small banks, nor do they apply to the ever-changing competitive realities in banking. *Philadelphia National* was based on the competitive situation prevailing almost a decade ago. Today banks have infinitely more competition from other financial institutions.

Philadelphia National, after all, did not rule that in all instances a bank merger must only be evaluated in the commercial banking market. In *Philadelphia National* the district court ruled that for the purposes of section 7, commercial banking in the Philadelphia area is a line of commerce. The appellees there did not contest this ruling. And it was by footnote that this Court listed the cluster of services said to characterize a commercial bank (374

U.S. at 326 *n.* 5). Similarly, in *Nashville,* the district court had found that commercial banking was the relevant line of commerce. This Court, by footnote, agreed, on the facts, with that conclusion.* Nowhere has this Court said that as to all banks, big and small alike, that commercial banking is invariably the relevant market.

The premises upon which *Philadelphia National* was based no longer reflect the competitive realities of present day banking, nor do they reflect the competitive situation of banks which, like defendants', operate within local areas. The Justice Department itself in its brief submitted in *Philadelphia National* recognized that small banks present a different situation:

> All commercial banks, *at least all those of substantial size,* perform the same functions and render the same services. (Brief, p. 32)

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* The Court in *Nashville* said:

> We also find in the Act no intention to alter the *traditional methods* of defining relevant markets in which to appraise the anticompetitive effect of a merger, and so agree with the District Court that *commercial banking in Davidson County* was the relevant market for appraising this merger. (390 U.S. at 182 n. 15 (Emphasis added).)

Commenting on the above statement, the District Court in *United States* v. *First National Bank of Jackson,* 301 F. Supp. 1161, 1181 (S.D. Miss. 1969) said:

> This Court finds that the above statement by the Supreme Court was an affirmation of the trial court's determination that, under the *particular* facts and circumstances of that case, commercial banking was the appropriate line of commerce within which to measure the impact of anticompetitive effects, if any, of the proposed merger therein. (emphasis in original)

Justice recognized that small banks could not perform all the services nor could they be expected to do so.

The operations of these two small banks must be considered. They do not make any substantial loans to other financial institutions, and these other institutions are in no sense dependent upon them for their own funds. (See Pl. Ex. 84; R. 1526, A. 653; Pl. Ex. 11; R. 85). The Court in *Philadelphia National,* however, relied heavily on this factor in finding that the banks, as primary accumulators of money, had a competitive edge over finance companies and others. But, this consideration is wholly irrelevant for small banks operating in local areas. As Bernard Shull, a senior economist with the Office of the Comptroller, stated:

> No matter what the extent of their overall dependence on commercial banks for funds, large non-bank financial institutions are not necessarily dependent on commercial banks *in any particular local area.* These institutions can compete for the same local customers without concern about retaliation from local banks. "Commercial Banking as a 'Line of Commerce'" *National Banking Review* (December 1964) (emphasis in original)

Phillipsburg National and Second National are not a factor in the national market. They are not a source of funds for non-bank financial institutions.

Moreover, the overall dependence on banks has, as Homer Kripke testified, been much diminished. Now, these same financial institutions have entered the commercial paper market and through the issuance of short-term notes have attracted those funds that used to lie in demand deposit accounts.* Certificates of deposit have been is-

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* The increasing role of commercial paper is outlined in "Money Market Instruments," Federal Reserve Bank of Cleveland, January 1967, at 41-47.

sued by the bank to attract some of these funds, but the banks have been generally unsuccessful. Now, less than 10% of the funds used by finance companies are provided by banks; the vast majority of these funds are attracted by these other means (A. 346-49).

Many prominent economists recognize the vast changes which have occurred in banking since the decision in *Philadelphia National.* As Paul S. Nadler, an Associate Professor of Finance at N.Y.U. has recognized:

> Banks do not compete only with other banks. Except for the holding of demand deposits and the consequent ability to create money, each bank finds itself competing in every area of lending with the various financial intermediaries, with the money and capital markets, with the ability of corporations to finance themselves through internal generation of cash, and with government financing units. Paul S. Nadler, *Commercial Banking In The Economy,* at 176 (Random House 1968)

The areas of competitive overlap have resulted in a continuing interplay among financial institutions:

> In fact, it might be said that as competition develops in lending and in attracting savings and time deposit funds, each financial institution reacts by taking on more of the services of its competitors in an attempt to avoid the earnings squeeze through diversification. Banks have entered the savings and mortgage markets in competition with savings banks and savings and loan associations; banks are making more term loans, competing with the longer-term lending of insurance companies and pension funds; savings banks and savings and loans are

> working to enter the installment lending areas, since they face competition in their traditional loan outlet, the mortgage market. The choice of the borrowing customer becomes wider and wider. *Id.*

The result is simple: The areas of competitive overlap have expanded, the unique services of banks have diminished in importance* and, for some, have all but disappeared. Nadler sees the activities of financial institutions as becoming more and more similar as time goes on:

> The entire financial community is engaged in a trend toward what might be called *scrambled finance,* each type of institution becoming more like its competitors, and each bank and financial intermediary competing more with other institutions in its own industry as well as with institutions in other phases of the financial structure. Id. at 177

Professor Wallich of Yale University sees the banks as hobbled by regulations in their attempts to compete with these other institutions; he sees them losing the battle through excessive regulation.** Wallich recognizes that

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* T. H. Lee in an article entitled "Substitutability of Nonbanks Intermediary Liabilities for Money," appearing in the Journal of Finance, xxi No. 3 (September 1966) stated:

> The rapid growth of liabilities of non-bank financial institutions in recent decades has stimulated intensive discussion concerning the substitutability of such liabilties for money . . . this paper presents statistical evidence to show that non-bank intermediary liabilities indeed are close substitutes for money. (*Id.* at 441)

** Henry C. Wallich, "Banks Need More Freedom To Compete" *Fortune* (March, 1970).

"the bank continually encounters new non-bank competitors in areas of business they thought they had to themselves." (*Fortune,* March 1970 at 114). He sees the banks as caught in the credit squeeze:

> . . . the higher interest rates go, the more it pays depositors to economize on the holding of cash balances. As more highly automated payment techniques are introduced, factors adversely affecting the demand-deposit side of the banking business will multiply.
>
> . . . .
>
> To stay in the running, banks will increasingly have to replace demand deposits with time deposits. Even then, time deposits will be a reliable source of funds only if the Fed can be prevailed upon to give up the use of Regulation Q as a credit control instrument. (Id. at 140).

Wallich also sees competition on the lending side. Looking to the period before the present tight money situation, Wallich said:

> To be competitive, they must make it attractive to borrow from banks. In the recent period of strenuous demands for funds, of course, banks have hardly been beset with this problem. But for considerable periods earlier, they had to contend with mounting encroachment on their lending by life insurance companies and pension funds, and lately new breeds of competing lenders have reared up—finance companies, take-over specialists, high-risk lenders ready and eager to accept equity kickers. In times of less intense demand, the banks will have to adjust their lending to changes in competition and markets. (Id. at 143).

Similar conclusions were reached by the experts testifying in this case: Homer Kripke, an expert on the activities of finance companies; Emanuel Gnat, chief of the policy and planning staff for Prudential; and Warren Hill, president of the Savings and Loan League of New Jersey. Their conclusions as to the competition from other institutions were seconded by the economic experts in money and finance called by defendants and the intervenor: Nevins Baxter from the Wharton School and William Paul Smith, a senior economist with the Office of the Comptroller. Even Franklin Edwards admitted to difficulties with the "cluster of services" concept and the conclusions drawn from it (A. 182, 185-86). Banks are now competing in a market that includes many other financial institutions and the banks no longer benefit from the exercise of any competitive leverage in that competition. The competitive realities of the market therefore require that the activities of these other institutions be included in the analysis of the relevant market.

C. The Bank Merger Act of 1966 allows the fact finder to consider the influence of other financial institutions in determining the relevant product market

The B.M.A. '66, as passed by Congress, clearly contemplates that the activities of other financial institutions may be considered. The Act, as this Court has stated, imported the traditional antitrust standards from the Sherman Act and section 7 of the Clayton Act. *Nashville, supra,* 390 U. S. at 181-82. The analytical approach was to be the same, but it did not invariably follow that commercial banking was always to be the relevant line of commerce in each local area.

If Congress had wished to restrict the product market to commercial banking factors, it could have easily said so.

Instead, and as more fully developed later, we find extended discussion of the role played by other financial entities in the legislative history of the Act.

In the bill as passed we find the deliberate omission of any reference to "line of commerce," the phrase used in the corresponding portion of section 7 of the Clayton Act. The Clayton Act refers to:

> . . . where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly. (Section 7 of the Clayton Act, 38 Stat. 731, as amended 64 Stat. 1125, 15 U.S.C. §18)

In contrast thereto, *B.M.A.* '66 refers to:

> (B) any . . . proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or tend to create a monopoly . . . (12 U.S.C. 1828 (c) (5) (B)

The omission, while it may not affect the "traditional methods," is significant. When reference is made to the Clayton Act pattern from which it is taken, it is clear that Congress had no intent to legislate that commercial banking is the relevant line of commerce for all banks.

Looking to this specific omission in the statute, the district court in *United States* v. *Crocker-Anglo National Bank*, 277 F. Supp. 133, 155 (N. D. Calif. 1967) stated:

> . . . if change occurs in legislative language a change was intended in legislative result.*

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* This court did not express any opinion as to the significance of this omission in its opinion in *United States* v. *First City National Bank of Houston*, 386 U.S. 361 (1967).

What change?

The internal arrangement of Paragraphs (A) and (B) of Section 1828(c)(5) suggests that Congress intended to leave the Court free to define the market consistent with the commercial realities faced by the particular bank. Comparison of (A) and (B) shows the deliberate omission of the reference to the "business of banking":

> (5) The responsible agency shall not approve—
>
> (A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the *business of banking* in any part of the United States, or
>
> (B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anti-competitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. (emphasis added)

The omission of the phrase, "line of commerce," as it appears in the Clayton Act model, and the omission of "business of banking" in paragraph B make clear the intent of Congress to leave the Court free to inquire into the parameters of the relevant product market and to include other financial institutions when the factual circumstances require.

Impressed by this distinction in *Crocker-Anglo National Bank*, the court there stated:

> Subparagraph 5(A) immediately preceding subparagraph 5(B) provides the first substantive test for bank mergers. It is in terms of monopoly. It refers expressly to 'the business of banking'. Congress obviously thought it 'made sense' and was not 'out of place' to use the words 'business of banking' when formulating the monopoly test. In the following paragraph Congress just as obviously must have thought it 'made sense' to omit those words. (277 F. Supp. at 155)

The "business of banking" was dropped. "Any line of commerce" was dropped. The district court as the fact-finder was left free to examine the competitive situation in the market and, as here, to recognize the activities of other financial institutions.

The legislative history supports this conclusion. Senate Bill 1698 as originally introduced by Senator Robertson, Chairman of the Banking and Currency Committee provided for an exemption from the antitrust laws for bank mergers. As amended by Senator Proxmire, the Bill passed the Senate and was sent to the House. There, an unprecedented struggle ensued as Representative Patman sought to bury the Bill and the majority of the members of the House Banking and Currency Committee, which he chaired, sought to have new banking legislation reported to the floor. After a rump session held by the dissidents in Patman's absence, a compromise was effected and Representative Patman reported the House version of the new legislation stating:

> Mr. Chairman, if I alone were writing the legislation and proposing it, I certainly would not pro-

> pose it as it is before us. I would be against it as a matter of principle. 112 Cong. Rec. 2357 (1966).

Those active in sponsoring the bill and in seeking the new legislation did speak out as to its intent. Congressman Ashley, a member of the dissident majority and the House manager for S. 1698 stated in House Report 1179, 89th Cong., 1st Sess. 4-5 (dated October 19, 1965):

> In making this review your committee expects the banking agencies, the Department of Justice, and the Courts to give full consideration to all aspects of the public interest, and take into consideration all elements of competition and all elements entering into the convenience and needs of those who are to be served by the resulting bank. The Committee recognized that commercial banks face intensive competition from other financial institutions —savings and loan associations, mutual savings banks, insurance companies, finance companies, and so forth. The Committee also recognized that competition between commercial banks and other institutions includes local competition, regional competition, national competition and even international competition for one part or another of the business. To overlook any one of these aspects of the competition, or to concentrate on one of them to the exclusion of the others, would be unrealistic and might well diminish, not increase, financial competition.

In recommending the House version of the Bill to the Senate, Senator Robertson, who had spent much time in effecting the compromise, echoed the comments of Mr. Ashley and of the District Court in *Crocker-Anglo*:

> The text of paragraph (B) of the new bill follows the terms of section 1 of the Sherman Act and section 7 of the Clayton Act, with the exception that the reference to "any line of commerce" in the Clayton Act is not carried over into the new bill. In this respect the new bill resembles the Bank Merger Act of 1960, and calls for an appraisal of the overall effects of the merger on competition, weighing increases of competition in one field against decreases in competition in another field. The banking agencies and the courts, in other words, are not intended and are not permitted to select some, single, perhaps minor aspect of the banks' business and to say that, because there is some lessening of competition in this element of the business, the overall effects of the merger—the increase of competition in the entire field of banking and in the broader field of financial institutions which may result from other aspects of the merger—are irrelevant and may not be considered. 112 Cong. Rec. 2655 (1966).

In delineating the market in which banks compete, Senator Robertson adopted a course not unlike that of the district court in the present case:

> In considering the amount of competition in a town, even a town with only one bank or no banks, we cannot overlook the importance of banking by mail. Many banks and many savings and loan associations, too, make a considerable effort to attract savings by mail, and this constitutes a substantial element of competition for funds, both individual and corporate, in large and small amounts, in every town which has a post office or a mail box.

Furthermore, the business of banking is not a simple or limited activity. On the contrary, commercial banking consists of many different activities, and there are competitors in other fields for each of these activities.

For personal demand or time deposits, banks compete with savings banks, savings and loan associations, and credit unions. This is real and fierce competition, as can easily be seen from the various trade publications and the newspaper advertisements which have followed the recent increase in the ceilings on interest rates in savings accounts in commercial and savings banks.

For consumer loans and home mortgages, commercial banks must compete with finance and insurance companies, in addition to savings banks, savings and loans and credit unions.

Commercial banks must compete for deposits from and loans to business firms, with insurance companies, factors, savings banks, and savings and loans, and even with the U. S. Government—both as issuer of bills and notes which corporate treasurers now find attractive in large quantities, and as issuers of vast quantities of FNMA, EXIM, and SBA, Home Loan Bank and other obligations or participations.

And in most of the other services commercial banks provide, they meet with other competition. Trust services are also provided by individual lawyers, as every lawyer in the Senate knows, or by professional trustees, about whom our friends from Boston can tell us. 112 Cong. Rec. 2655 (1966).

This approach, like that of the district court, involves a broadening of the product market. The district court, having found that other institutions compete with commercial banks, could have relied on the national averages for the distribution of savings and loans to determine the defendant banks' percentage shares in the market. *Cf. United States* v. *Crocker-Anglo National Bank, supra.* See *supra,* at pp. 38-39. The Justice Department claims that the district court created a series of sub-markets of commercial banking. In truth, the reverse occurred. The whole tenor of the district court's opinion shows that the court was seeking to describe the competition among all financial institutions and that, like those who participated in the passage of S. 1698, the aim was not to restrict the market to the narrow confines of commercial banking.

D. The traditional antitrust analysis supports the Court's delineation of the market in this local area.

Of necessity the product market within which a merger is to be considered depends, as does the geographic market, on the nature of the particular entities under consideration and the nature of the competition which they face. *United States* v. *Continental Can Co.,* 378 U. S. 441, 456-57 (1964); see also *United States* v. *Crocker-Anglo National Bank,* 277 F. Supp. 133, 199 (N. D. Calif. 1967). The line of commerce within which defendant banks compete must be viewed in terms of the services which these banks in particular provide; no preconceived industrial formula may be applied. See *Brown Shoe Co.* v. *United States,* 370 U. S. 294 (1962), calling for a consideration of the particular facts in each case.

The recent decisions of the district courts in bank merger cases uniformly show that "commercial banking"

as a line of commerce has lost its relevancy in the local market. In each of the five most recent bank merger decisions, including this case, the district court using the traditional methods of antitrust analysis has felt compelled to recognize that other financial institutions are now a part of the local market. See *United States* v. *Crocker-Anglo National Bank*, 277 F. Supp. 133, 153-62 (N. D. Calif. 1967); *United States* v. *Provident National Bank*, 280 F. Supp. 1, 7-9 (E. D. Pa. 1968); *United States* v. *First National Bank of Jackson*, 301 F. Supp. 1161, 1179-83 (S. D. Miss. 1969); *United States* v. *First National Bank of Maryland*, CCH Trade Cases §173.061, at 88, 157-88, 161 (D. Md. 1970). The district court in *Jackson* pointed to the specific problem arising in each of these local areas:

> The generalization about the "line of commerce" or "product line" as it may relate to commercial banking is not meaningful unless it is related to a specific geographic market. (301 F. Supp. at 1182-83).

The premises which might at one time have been applied to large city banks operating in both the national and local markets cannot be applied to these two small banks. If they are applied, then there is no need to consider the circumstances in the local area at all.

In the *Jackson* and *Maryland* cases, the district courts there concluded that the relevant line of commerce was broader than "commercial banking;" but, since the result would still be the same they evaluated the merger in the commercial banking market and found that there would

not be substantial lessening of competition.* The district court in the present case did precisely that. Using commercial banking factors to evaluate the effect of the merger in this local market, it found that there would be no measurable anticompetitive effect.

II. The Trading Area Delineated By The District Court Is The Appropriate Section Of The Country Within Which To Evaluate The Merger.

The Justice Department has expended considerable time and effort in attempting to show that either Phillipsburg and environs or Phillipsburg-Easton and environs is the relevant market area within which to appraise the effects of this merger. The Department has failed.

The Department by focusing attention on these narrowly delimited areas now proposes to fragment the country into literally thousands of tiny markets and to view anticompetitive effect in each. Phillipsburg-Easton and environs as proposed by the Justice Department for its "economically significant" market has a population of only 88,500, or five ten-thousandths of the total population of this country (Def. Ex. 15; R. 776, A. 806). Phillipsburg and environs, with a population of 28,500, has roughly one-third of that. These small areas cannot

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* The district court in Maryland stated:

> Those banks are in direct competition for a great deal of that business with savings banks in Baltimore City, or with building and loan associations as well as other financial institutions in and out of Harford County. To put blinders on and to ignore those facts would result in this Court attempting to assess present and potential commercial banking competition in Harford County in a vacuum. (CCH Trade Cases §173.061 at 88, 160)

conceivably be considered a "market" for antitrust purposes. Plaintiff's own expert, Franklin Edwards, in his market studies, had never analysed areas as small as these (A. 218-19).*

A. Justice has distorted the language of *Philadelphia National* in an effort to define a narrow geographic market for defendant banks

It must be remembered that the area chosen in *Philadelphia National* was a four-county area with a population of over 3.4 million people. The Court chose the area where branching was allowed in Pennsylvania. If we adopt the same standard here, we could choose the seven-county First District with a population in excess of 3 million, the area where branching *de novo* or by merger is allowed by virtue of an amendment to the banking law enacted since trial below. N.J.S.A. 17:9A-19. It is also to be observed that New Jersey holding companies are permitted to operate state-wide under companion legislation enacted the same day. N.J.S.A. 17:9A-345.

It is indeed difficult to reconcile the holding in *Philadelphia National,* that the geographic market is a four-county area, with Justice's contention that "the teachings of this Court," in that case, show that "Phillipsburg-Easton is a relevant market. . . ." (See Plaintiff's Brief at 33). More persuasive that the antitrust test to be applied in merger cases must be made on the basis of

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* There is here a grave question of whether areas as small as these are of sufficient commercial importance to require the attention of the Antitrust Department and whether future suits, which small banks like defendants can ill afford, should be encouraged on such bases. See *Wall Street Journal,* March 9, 1970, p. 14.

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anticompetitive effect. There must be "some fair intermediate delineation which avoids the indefensible extremes of drawing the market either so expansively as to make the effect of the merger upon competition seem insignificant, because only the very largest bank customers are taken into account in defining the market, or so narrowly as to place appellees in different markets, because only the smallest customers are considered." *Philadelphia, supra, Id.* at 361 (A. 676-77).

In the light of the evidence presented to the court, the market area chosen is a conservative one. Most bankers testified that their areas of effective competition embraced far larger areas, and that they drew their business from 20-25 miles around their bank offices (A. 43, 70; Pl. Ex. 84; R. 1526, A. 657; Pl. Ex. 53; R. 414, at pp. 205-06). The shopping and working patterns in the Lehigh Valley also demonstrated that people regularly travel longer distances to shop for convenience goods and that they commute to work over longer distances than that chosen by the district court in circumscribing the market (A. 45-46, 286-87, 372-73, 423, 441, 472-73; R. 281 . The roads in the area provide opportunity for rapid transit between the central towns and cities (A. 260, 327-28, 471-72; R. 1513). Shifts in population to the outskirts of some of the established towns and cities have resulted in changing patterns of working, shopping and commuting.

The market chosen by the district court is, as a result, a selective one, one which is based on the testimony in the record and one which does not adopt any of the mar-

kets proposed by the parties.* In *Philadelphia National,* the Court, after discussing the "direct and immediate" test (374 U. S. at 357), turned in fuller explication of that test to *Tampa Electric Co.* v. *Nashville Coal Company,* 365 U. S. 320, 327 (1961), and quoted the following with emphasis by the Court:

> . . . the "area of effective competition in the known line of commerce must be charted by careful selection of the market area in which the seller operates, *and to which the purchaser can practically turn for supplies.*" (374 U. S. at 359) (emphasis by Court).

The Justice Department somehow seeks to forget the emphasis of the Court; to forget the voluminous evidence in the record as to where customers of Phillipsburg National and Second National can turn to do their banking business; and to ignore the related evidence as to the mobility of the population, shopping patterns, commuting patterns and travel time statistics (A. 45-46, 260-61, 270, 320-321, 327-28, 366, 372-76, 386, 411, 423, 428, 432-33, 471-73, 499-500, 512; R. 1428-29, 1484; Def. Ex. 32; R. 1220; Pl. Ex. 53; R. 414, at p. 241).

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*The Justice Department suggests in passing that one factor to be considered is "the view of other federal banking agencies that the region was an area of effective competition" (citing *Philadelphia National,* 374 U.S. at 361). As both the statute and this Court have made quite clear, the district court is to hold a trial *de novo.* Since the district court had available an abundance of evidence which was not presented to the banking agencies, including evidence as to recent changes resulting from the amendment to the banking law in New Jersey, the Court's application of the same standards as the agencies under statute need not and could not lead it to the same result as to the extent of the geographical market.

Viewing the question realistically, what is sought to be prevented is the concentration of market power in any geographic area in which a customer would ordinarily seek the services or the product in question, and beyond the boundaries of which he would not ordinarily travel to seek alternative sources. For this reason, the most useful standard by which a geographic area within which to assess a merger can be described is determined by the area within which financial entities can or do operate, and purchasers can seek alternative sources for the services in question. Although people can and do travel to Philadelphia and Newark in certain instances, while others travel only three to four miles, these are the extremes and not the reasonable means by which the area should be described.

In *Philadelphia-National,* the Court looking to where the customer could practically turn for banking services determined that the facts supported a four-county market containing some 1420 square miles and 3.4 million people. The area and population in that case far exceeded that found by the district court in the present case. The area in *Philadelphia National* embraced the whole of the permissible branching area. In New Jersey, now, the defendant banks could branch throughout the whole of the First District including seven northern counties. The new district runs from the Hudson River to the Delaware River and includes some of the most populous counties in the State. The population of this District according to the 1960 census was 3,095,247; its area was in excess of 2000 square miles. If the limits of permissible branching are taken as the test, then clearly the district court's market is a small one.

C. The small areas chosen as plaintiff's proposed markets do not comprise a "section of the country"

In seeking to find an anticompetitive effect under the traditional antitrust standards, the Justice Department has been forced to delineate a "mini-market" in this case, one which cannot be said to constitute a meaningful "section of the country." Franklin Edwards, plaintiff's expert, supports this market on the basis of what he calls "casual empiricism." (A. 187-194, 213; R. 712). Having strolled through downtown Phillipsburg one morning (A. 221-23), he finds that theoretically one could obtain the essential goods and services without straying from the town (A. 189-90). Then, on the basis of banking statistics as to customer location he claims that either Phillipsburg and environs or Phillipsburg-Easton and environs is the relevant market (A. 202-203). Edwards admitted that as to Phillipsburg and environs his was "a rather surprising conclusion." (R. 649). He also admits that his approach relying on banking statistics alone makes no allowance for potential competition (A. 198).

The standards developed by Franklin Edwards in his testimony are not even in accord with *Philadelphia National;* he did not ask himself where the customer can *practically* turn, he looked to where he might turn if he were bent on circumscribing his movement as much as possible. His analysis emphasizes one limited extreme. The analysis is one which has lost its validity in this mobile age, an age where banking-by-mail and credit-card banking have vastly expanded the geographical boundaries of competition.

Now, the customer need not make frequent trips to the bank. For the small customer, especially, a trip to the

bank to obtain a small loan or make a small deposit is no longer necessary. To obtain a small loan, he can use one of the widely advertised check loans; the small customer, in effect, has been granted a "line of credit." To make a deposit, he can use the corner mailbox. To purchase goods, he can use either the check loan or one of the many credit cards that he now carries in a special credit card wallet. The universal credit card, with direct credit of the individual's paycheck and debits applied after each purchase has not yet arrived, but there are many who see it coming. Now, when small payments or deposits are made, the bank customer can readily use the nearby mailbox and still be miles away from the bank itself. Looking to the smallest area conceivable to him, as Franklin Edwards did, is no longer practical when these new conveniences have vastly expanded the market for the small customer.

The district court, recognizing the limitations of Edward's analysis stated:

> . . . even if little or no business is presently derived from a particular locality, if there is convenient ease of access to the market, the *potential* use as a satisfactory, convenient alternate choice should be considered (A. 681) (emphasis added).

Moreover, the areas delineated by plaintiff do not constitute an economically significant "section of the country." Before plaintiff can claim that the judge erred in viewing competition in a single market, it must show that one of the other areas it proposes is a "market," an economically significant area. The "section of the country" chosen must be a "market," it cannot be a slice of a market. As this Court stated in *Brown Shoe Co.* v. *United States,* 370 U.S. 294, 336-37 (1962):

> Congress prescribed a pragmatic, factual approach to the definition of the relevant market and not a formal legalistic one. The geographic market selected must, therefore, both "correspond to the commercial realities" of the industry and be economically significant. Thus, although the geographic market in some instances may encompass the entire Nation, under other circumstances it may be as small as a single metropolitan area.

When the Court subsequently considered the banking situation in *Philadelphia National,* it confirmed the applicability of this reasoning in *Brown Shoe.* It noted defendant's concession that "the four county area has *sufficient commercial importance* to qualify, under *Brown Shoe Co., supra.* (370 U.S. at 336-37), as a 'section of the county' within the meaning of section 7." (374 U.S. 321, 359 n. 36 (1963)) (emphasis added)

The communities chosen by plaintiff as a "section of the country" lack the economic significance ascribed to them. As the voluminous statistics with regard to the ABE-SMSA demonstrate on this record, Phillipsburg and environs and Phillipsburg-Easton and environs as a *practical* matter are not economically self-sufficient areas; they are only a part of this larger area described by the SMSA. They are a slice of the "market." It is the larger area, as circumscribed by the district court, to which the customer can and does turn for his daily needs.

The narrowly drawn areas proposed by plaintiff are not of sufficient commercial importance. Within the largest of the two can only be found five ten-thousandths of the total population of the country. Typical service industries in the area are set up on a much wider basis than

Phillipsburg-Easton and environs (A. 373-376). The insurance industry uses the SMSA as its basic working unit (A. 310-13; Def. Ex. 48; R. 939). Automobile dealers are given the Lehigh Valley as their service area (A. 437, R. 1233). Truckers and contractors operate on even wider bases (A. 320-21, 423, 433).

The Justice Department has sought to carve too small a piece out of the integrated ABE-SMSA. Even the small customer readily and regularly traverses the bounds of these small markets. The markets chosen do not reflect the reasonable mean which this Court said would become apparent from looking to the areas of competitive overlap. The areas chosen are impractical, insignificant and insufficient; neither one is a "market."

D. The evidence would have supported the District Court's choice of a wider market in this case

The district court could have chosen a wider market in this case; it could have chosen the ABE-SMSA. Recognizing the opportunities for rapid transit and the high degree of economic integration in the SMSA, the court said:

> There is considerable evidence which tends to support the argument of defendant banks that the SMSA is an appropriate geographic market. (A. 677).

The SMSA is the only market area in this case representing the independent determination of government agencies arrived at without reference to the proposed merger. It is the only market which has previously been found to satisfy the criteria for a standard metropolitan statistical area. It is the only market which clearly has economic

significance. With one of the lowest concentration ratios as published by the F.D.I.C. in its statistical survey (Def. Ex. 9; R. 776, A. 794), it is the only market area proposed where concentration ratios may be of sufficient commercial importance. Clearly, if an area with only seven banks is chosen, almost inevitably the four largest will have over 56% of the deposits. The statistics themselves belie the insignificance of the "market" areas advocated by the Justice Department.

III. The District Court's Consideration Of The Convenience And Needs Of The Community To Be Served In The Areas It Selected Showed That The Community Advantage Would Outweigh The Assumed Anticompetitive Effect In Any Of The Trading Areas Chosen By The Parties

A. The Decision Of The District Court Is Consistent With The Bank Merger Cases Heretofore Decided By This Court

Justice, by repeated quotations from *Philadelphia National* and *Nashville* seeks a definition of product and geographical market contradicting that pressed for by defendants and the intervenor, and that actually chosen by the district court.

It should be kept in mind that *Philadelphia National* covered a wide four-county area with a population of 3.4 million and banks holding billions of assets. *Nashville* covered an entire county with a population of 400,000 and banks holding over one billion in assets. Justice now seeks to use these cases to claim improper a market chosen by the district court approximating one-half of the ABE-Pa-N.J. SMSA with a population of roughly 200,000 and total assets of about $600 million.

In *Nashville* and *Philadelphia National,* there was no hearing by the Comptroller. Here there was.

In *Nashville* the lower court did not make an independent determination of the convenience and needs requirement. Here the Judge in a *de novo* proceeding made such a determination.

In *Nashville* and *Philadelphia National* there was obvious concentration and a continuing trend to concentration. Here there was no concentration nor trend.

In *Nashville* the Court rightfully held the merger suspect so far as "convenience and needs of the community to be served" were concerned when it pointed out that the owners of the acquired bank preferred not to make serious efforts to improve management, but rather sought the merger route which produced a "profit of $750,000 on a two-month investment of $3,800,000." (390 U.S. at 192). Here there was no premium for the stock (A. 154-55, 380). Here serious efforts were made to obtain management (A. 151-54).

Nashville recognized that the holding of *Philadelphia National* was altered by the BMA '66. But it held that the district court had not been specific in describing the beneficial consequences of the merger for the Nashville community. Here the district court found that the merger fully met the convenience and needs of the community to be served. *Nashville* recognized among other advantages to be considered was a larger lending limit. (390 U.S. at 186). The district court here found a need for such a larger limit. *Nashville* recognized that many other services should be considered as meeting the community need. The district court here enumerated both where the need was in the community and how it could be met by this merger.

B. The District Court Applied Standards Consistent With The BMA '66

The Justice Department claims that the district court erred in its assessment of convenience and needs, that it restricted its consideration to Phillipsburg alone, instead of looking to the whole of the trading area previously delineated. The interpretation made by the Justice Department is clearly an inaccurate one; once again, the Department is using blinders to ignore the tenor of the district court's opinion. The district court made two ultimate findings:

1. "The Court finds that there is a preponderance of evidence showing that any conceivable anticompetitive effect of the merger is clearly outweighed by the effect of the transaction in meeting the needs and convenience of the community to be served." (A. 699)

2. "[Even] if there were *de minimis* anticompetitive effect in the narrowly drawn market proposed by the government, such effect is clearly outweighed by the convenience and needs of the community to be served by the merged bank." (A. 699)

The first conclusion appears in the concluding section of the district court's opinion; the second, in its final conclusions.

An examination of the tenor of the opinion is necessary. Nowhere does the district court equate "community" with Phillipsburg and nowhere does it purport to limit its findings as to the conditions "in the area." At the beginning of the section of the opinion dealing with convenience and needs the district court states:

> There are only a few of the larger banks *in the area* that can handle loans of $75,000 and upward (A. 689) (Emphasis ours)

Continuing, it states:

> There are very few banks *in the area* that are even partially equipped to furnish large commercial and industrial enterprise with the kind of trust and loan banking service that is needed. Another larger bank offering these services would diminish the existing inadequacy." (A. 689) (Emphasis ours)

After including a series of excerpts from the record showing the genuine need of the community, the court continued:

> The foregoing are only a few excerpts from a volume of evidence which clearly establishes the inadequacy of loan service and trust service available in the community and the need for improvement in that aspect of local banking. As commercial and industrial enterprise continue to grow and increase numerically *in the area,* a substantial part of banking business will have to be done outside the *community.* (A. 697) (Emphasis ours)

The generic equation of "community" and "area" simply will not support the Justice Department's proposed reduction of the findings to encompass only Phillipsburg. The district court considered the advantage to the whole of the area and performed the required weighing in both the actual market and the theoretical "markets" proposed by the Justice Department.

Also, just as a matter of pure logic, the purported issue raised by the Justice Department provides its own answer. The only question is whether anticompetitive effect is clearly outweighed by the convenience and needs of the community. Assuming the district court concluded that convenience and needs in the inner circle (Phillips-

burg) clearly outweighed anticompetitive effect in the outer circle (the trading area), there was no need to go further. The test was satisfied. Even if the Justice Department should prevail as to the relevant geographic market, still the district court's findings would be sufficient. It has already found that the convenience and needs of the community outweigh the anticompetitive effect even in the narrower "community" or "section of the country" proposed by the Department.

The Justice Department claims that when a merger has a substantial effect on a particular group of people in a particular area, only the convenience and needs of the same people in the same area may be considered in the weighing test. This rather particularized intent is said to be the manifest intention of Congress, but no citation at all is made to the debates or reports in Congress.

In considering the convenience and needs of the community to be served, Congress, however, clearly intended a broad "public interest" test to be applied, and not one that looks only to the structural limitations of the trading area. In so doing, Congress specifically sought to reverse the conclusion reached in *Philadelphia National* that "anticompetitive effects in one market could [not] be justified by procompetitive consequences in another." (374 U.S. at 370). A series of remarks by various Congressmen, members of both the dissident majority and the Patman factions, shows that a broad public interest test is now to be applied.

> Mr. Ottinger: The public interest in competition is to prevail unless clearly outweighed by the public interest in meeting the convenience and needs of the community to be served. (112 Cong. Rec. 2456 (1966)

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Mr. Todd: I refer to page 3 of the committee report where the following language appears: "but permits an exception in cases where it is clearly shown that a given merger is so beneficial to the convenience and needs of the community to be served," and so forth. In a case such as this are we talking primarily about the effect on the local market of the merger, or are we talking about the service to the community in which the bank is located?

Mr. Ashley: I think the answer to that question is that it can be both. It depends on the facts of the particular case.

Mr. Todd: If, for example, the market is not served by the national money market, then you might say that the national money market should be considered in addition?

Mr. Ashley: This might well be a factor. (112 Cong. Rec. 2457 (1966))

* * *

Mr. Reuss: What is meant by that provision and what counts is the effect of the transaction in meeting the needs and conveniences of the community which that particular sought-to-be merged bank serves. In considering the convenience and needs of that community, one may, of course, look at the situation outside of the community in the larger regional or national market. But conditions in that regional or national market are relevant only insofar as they affect the convenience and needs of the community to be served.

I should like to ask the gentlemen from Ohio [Mr. Ashley] with the permission of the gentlemen from

n [Mr. Todd] whether he disagrees with
ave said.

ley: I can scarcely disagree with my friend
n as we worked hard and long over that
and that very interpretation of the lan-
112 Cong. Rec. 2457 (1966))

Report directed itself specifically to the
etition which this Court refused to consid-
hia National:

acknowledges that the general principle of
trust laws—that substantially anticompeti-
gers are prohibited—applies to banks, but
an exception in cases where it is clearly
at a given merger is so beneficial to the
ice and needs of the community to be
ecognizing that effects outside the section
untry involved may be relevant to the ca-
the institution to meet the convenience
s of the community to be served. (H. R.
1179, 89th Cong., 1st Sess. 3)

was returned to the Senate, the following
ed:

rtson: The bill makes clear that while the
titive effects of a proposed merger are to
t weight, the probable effects of the mer-
ie public interest are to be controlling.
particular community may have a bank-
which can be supplied by the merged in-
the fulfilling of which may be so benefi-
e public interest that it outweighs any
titive effect of the merger.

> Mr. Long of Missouri: What area is encompassed by the term "community to be served" in the bill? Mr. Robertson: This means the entire area to which services are or could be supplied by the proposed merged institution, and such area is of course not limited by city, county, or State geographical boundaries. As I have said earlier, the emphasis here should properly be on the words "to be served." A big New York bank serves local customers in New York, and it serves the big nation-wide industrial firms across the country and around the world. Artificial boundary lines, branching areas limited in one way or another by the different States have little or no significance. (112 Cong. Rec. 2663 (1966))

Convenience and needs in the local market, the regional market and the national market may be considered, if necessary. But there is no need to extend the discussion of convenience and needs once the public benefit is found to outweigh the anticompetitive effect.

In the present case, it was shown that merger would be of considerable benefit to local businessmen. Specialized officers could help local businessmen with their credit needs and could advise them properly as to the investment of their funds in profit-sharing and pension plans. The district court found that the provision of these specialized services might evoke a procompetitive response in the community:

> Indeed, there is a preponderance of evidence to support a conclusion that the merger would have procompetitive effect *if* the merged bank, employing its increased resources, adopted aggressive policies which would have a tendency to stimulate

other small banks to become more aggressive in serving the needs of the community. (A. 688)

There was evidence that the increased lending limit and the need of the bank to lend larger sums of money would lead to a decrease in the C & I loan rate for small businss-men. (A. 380, 387, 394, 448, 461, 477-78, 504, 545-46). The effect on the passbook rate would also benefit the customer. Commercial bankers who have been involved in bank mergers, and those who have studied the results of mergers (and not just a cross-section study at a particular time*), agree that to their knowledge there never has been an instance where a merger has had the effect of lowering rates on passbook accounts, but that they have on occasion led to higher rates (A. 380, 387, 394, 447-48, 461, 477-78, 504, 545-46).

The Justice Department erroneously claims that the small customer has been harmed and only the larger customer benefitted. No such conclusion could be drawn on the record. At the trial the Justice Department produced no one who complained about the effect of the merger upon him. Not a single complaint was heard by public officials. Not a single banker claimed that the merger would have an adverse effect on his operations. All viewed it as healthy competition. The procompetitive response of other banks can only help the small customer

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* Edwards' study of loan rates to small businessmen dealt with loans made at a particular time, in 1955; it dealt with the circumstances of those times and preceded the recent, dramatic changes in banking. Even then, its theoretical approach was seriously questioned by Theodore Flechsig in *Banking Market Structure and Performance* (1965). Flechsig questioned the failure to account for regional differences and the bias introduced into the statistics through the inclusion of mutual savings banks in the concentration ratios.

as well as the large. The public interest in increasing competition clearly will be served.

The situation of the small customer must be considered. Generally, he requires fewer services than the larger customer, and generally, it is *these* services which other financial institutions compete avidly to supply. Both small banks and larger banks can supply the services of these customers. Other financial institutions, as the district court found, provide widespread and virulent competition for these services; and their services are regularly used by the small customer. What is happening is quite evident. The larger customer is here gaining an additional alternative when he has often few alternatives for the supply of his particular requirements. The competitive effect on the small customer is non-existent; the procompetitive benefit to the businessman is obvious. It clearly outweighs any conceivable anticompetitive effect. Oddly enough, in the provision of certain services, related to the bank's lending limit, its trust services and its C & I services, the market is still relatively oligopolistic; and it is here that a new entrant is of peculiar benefit to the community in encouraging a procompetitive pricing and service response by those already providing these services.

In the present case, both the Congressional history and common sense support the approach taken by the district court. To equate "section of the country" with "community", as the Justice Department here prefers, would be directly contrary to the Congressional intent in passing BMA '66. The District Court in *Jackson* (*supra*, at 1222) concluded on the basis of the legislative history that its evaluation of the convenience and needs of the community could take account of effects outside the trading area. It is clear that here the term, "community," is a generic one and that a broad "public interest" test should be applied. The interest is that of the community, the public at large.

C. The Pro-Competitive Factors—Namely The Ability Of The Merged Bank To Compete With The Largest Banks In The First Banking District—Support The Conclusions Reached By The District Court

After the eleven-day trial and while the district court had the matter under consideration, the New Jersey legislature passed statutes allowing branching in three districts and permitting state-wide holding companies. N.J. S.A. 17:9A-19, N.J.S.A. 17:9A-345. Already the banks in Hackettstown and Washington, the two largest municipalities in Warren County after Phillipsburg, have been taken over by large city banks. Washington Trust with branches in Oxford and White Township has been taken over by National Newark & Essex, a $579 million institution. Peoples Trust Company of New Jersey, with deposits of $502 million, is seeking a merger with the Peoples National Bank of Hackettstown (Int. Ex. 30, A. 581, A. 781). Warren County National Bank, the only remaining bank with offices in Hackettstown and Washington, is to become an affiliate of First National State Bank of New Jersey, an institution with deposits of $659 million. As a result, each of the two banks in Washington and each of the two banks in Hackettstown will be associated with banks having over a half billion in assets apiece.

There is no doubt that the three banks in Phillipsburg, as well as other banks in Warren and Sussex, are fair game for attractive merger proposals by the large banks from Bergen, Passaic, Essex, Hudson and Morris Counties. The only way Phillipsburg banks can meet the convenience and needs of the community to be served is through this merger transaction.

These large banks, unlike the defendant banks, lack the local loyalties which have impelled these two small banks

to seek out better services for the community. As Mr. Greenley from Fidelity Union testified, the city bank will often turn down a participation when money is tight or more profitably invested elsewhere (A. 157-58). These city banks lacking local ties will readily accept deposits through their new branches, but they will funnel the money out of the community to the area of greatest profit. The ultimate decision-making power will remain in the city—outside the local community.

It is this challenge which these two small banks seek to meet. It is this challenge which their future as independent banks requires them to meet. If they can meet that challenge, perhaps other small banks will be encouraged as to their prospects and will resist the allurements of a merger offer from a large city bank.

The district court recognized that, as local industry outgrows the local banks, a substantial part of banking will be done outside the community. The district recognized that "[t]his is not only inconvenient, but economically unhealthy for future development." (A. 697)

The district court also recognized that the merger would have a procompetitive effect if the merged bank stimulated other small banks to become more aggressive in serving the needs of the community (A. 688). The merged bank thus stands in a peculiar position. Its success in providing new services will no doubt provoke a competitive response from other small banks in the area. Its success in resisting the allurements and encroachments of these large city banks will encourage others to maintain their independent status. In this case, not to allow this merger would be substantially anticompetitive.

IV. There Are No Alternatives To Merger To Solve The Managerial Problems Of Second National And To Obtain The Benefits Resulting From The Merger

In *United States* v. *Third National Bank in Nashville*, 390 U.S. 171 (1968), this Court developed the following test in considering the management problems of Nashville Bank:

> . . . we think it was incumbent upon those seeking to merge in this case to demonstrate that they made reasonable efforts to solve the management dilemma of Nashville Bank short of merger with a major competitor but failed in these attempts, or that any such efforts would have been unlikely to succeed. (390 U.S. at 189)

The test is two-pronged; it requires a showing of either reasonable efforts or a showing that such efforts would not be likely to succeed.

In this case both tests were satisfied. Reasonable efforts were made. Any further efforts would clearly have not been successful. As the prior discussion in the Statement shows, reasonable and prolonged efforts were made by William Greenley to attract managerial and officer personnel to Second National. Mr. Greenley looked for over a year, actually took a junior officer from Fidelity Union to Phillipsburg to look the bank over, but was wholly unable to interest anyone in a position at the Phillipsburg bank (A. 152-54, 169-70, 406, 438).*

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* In its discussion of the efforts made the Justice Department wholly ignores the efforts made by Mr. Greenley and considers, as the only effort made, the approach by Mr. Armstrong to a New York banker living in New Jersey. This distortion of the record only shows the limitations of Justice's argument in this regard.

Mr. Armstrong, a director of Second National, sought out an officer of the Chemical Bank of New York on behalf of Second National. However, these efforts, too, failed when the officer indicated his salary requirements (A. 406-08).

Several factors indicate that any further efforts would also have been fruitless. Phillipsburg, itself, is not an attractive town for young men (A. 153, 169, R. 1453). The young men, as Nevins Baxter testified, realize that the smaller the institution, the less the opportunity for future growth personally (A. 506-07). The fringe benefits also cannot compare with those of larger banks (R. 341, 887, A. 170, 392, 451-52, 506-07; Pl. Ex. 52; R. 414, A. 612, p. 134). Officers at the defendant banks were already well aware of the costs of managerial personnel and the proposed specialists through specialized services which send the resumes of officer personnel. They had also discussed the salary schedule with other bankers. Mr. Pursell of Second National felt "we couldn't even touch those salaries." (Pl. Ex. 84; R. 1526, A. 658) For either bank alone, the salaries of the proposed specialists were just out of their reach.*

Asked whether he thought these two banks could rely on internal development to obtain the required officer personnel and specialists, a Hunterdon banker, who had

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* Justice claims that the bank officers admitted no serious efforts to hire were made because of the merger discussions. (See Plaintiff's brief, at 53 citing Pl. Ex. 53, A. 646, 649; Pl. Ex. 54, A. 663-64) The Justice Department is here citing affirmatively the questions it posed, and not the negative response received when the questions were answered. The testimony of William Greenley and the directors of Second National showed that serious efforts were made (A. 152-54, 169-70, 406, 438).

started his development program in 1946, before the reduction in earnings per dollar, asserted:

> I don't think they would make it by themselves. I would certainly hate to come in here and have to try that. (A. 483)

Asked whether he felt aggressive management could be found to move these banks along, he stated:

> Not if you paid them the entire net earnings of that bank, frankly, and with what they would have to put out in addition for other expenses to make the facilities that that fellow would have a chance to go—and he couldn't do it. That one person couldn't. He wouldn't have a chance to go with it. It just isn't in the wood with what stuff will produce today. For a while we had cheap money and not much expense. Now we have got very dear money and very high expense, so the squeeze is actually a little tighter. (A. 483)

The credit squeeze has hobbled these two banks and removed any opportunity for internal growth.

Mr. Greer of Lafayette Trust felt that his bank could not hope to compete unless total footings of $50 million were attained not later than 1972 (A. 400-01). He said:

> I don't believe we will be able to do this on normal growth. I think we will need a merger ourselves in order to accomplish this objective in the time table that I have indicated. (A. 400)

The reduction in earnings per dollar has made it obvious that $24 million and $17 million banks simply lack the leverage to make the investment in the required specialists, that they lack the leverage to continue to grow with their

customer. The management gap is producing a service gap, all to the detriment of the community.

The district court found that the proofs satisfied both tests in *Nashville*. Reasonable efforts were made and any further efforts would most likely not be successful. It found that C&I specialists and trust specialists were "constantly sought by banks and difficult to obtain" (A. 690), and that the cost of their services "[could] be incurred only by banks larger than either PNB or SNB" (A. 690). Responding to the claim of the Justice Department, the court said:

> The government stresses the argument that neither PNB or SNB have made any genuine effort to recruit specialists to head a commercial and industrial loan department or a trust department, but the evidence does establish that such specialists are not easy to find and not likely to be induced to accept employment for a small salary or with a very small bank. It is, however, *clear from the evidence* that neither bank can afford the expense of employing well trained specialists to head a loan and trust department. There was tentative exploration of the possibility of obtaining qualified bank officers which ceased when it became *clear that the expense was out of reach.* (A. 690) (Emphasis added)

Thus, when we look to the particular circumstance of each of these banks, it is clear that merger is the only solution to the managerial problem and the only way in which specialized officers can be obtained.

In many ways, the advantages expected to result from the merger are unique to these two banks operating in

this particular area. Because they are not presently a factor in the provision of certain trust and C & I services, the merger results in benefits unique to these two banks and to the area. Because the area has previously been characterized by a relaxed competitive posture and the area has not benefitted from the aggressive provision of these new services, there will be benefits to the area which would not be nearly as pronounced elsewhere. While the merger will not result in the merged bank becoming a full service commercial bank, nevertheless it does bring its own special set of benefits to the public. The Court here is not dealing with a 20% increase in the lending limit of the bank as was the case in *Nashville,* or the addition of another man to a multi-officer trust or C & I department. Here involved is a qualitative change, not merely a quantitative one. What we have here is the introduction of factors wholly new to these two banks, and, in most instances, sorely lacking in the community. It is considerations such as these which the convenience and needs test looking to the broader contours of the public interest was specifically designed to recognize.

The *Nashville* test, recognizing the special situation of each bank, is a subjective one. It looks to what is reasonable under the particular circumstances of each bank. Here, problems of immediacy require a practical application of the test. The management at both banks is already far beyond the normal retirement age. Replacement is necessary. Meanwhile, large First District banks are already invading the territory of these two small banks. Not content to siphon away the funds of the large depositor, they are now entering the market with branches in an increased effort to attract small and large deposits alike. These special circumstances, an aging

management in the face of a changing law, portend the future of these two small banks, and the future is glum.

Many of the alternatives suggested by the Justice Department, such as the retention of earnings to expand the lending limit, wholly ignore the problem of immediacy. They are mere palliatives with no hope of curing the deep underlying problems facing these two small banks.

Basically, Phillipsburg National and Second National are seeking to obtain a number of conveniences, an increased lending limit, a C & I specialist, a trust officer, automated deposit services, a mortgage specialist, the ability to extend to the public a wider variety of loans, and the ability to enter the field of floor planning. In response, the Justice Department claims that the bank could afford *some* of these services separately, overlooking wholly the problem of whether it is practical to provide the service with limited capital to utilize the service fully.

But merger is the only way to obtain all of the conveniences, and it is the whole that should be weighed in the balance. Interestingly enough, the district court limited its discussion of the proposed conveniences. The ones chosen were those where the benefits clearly could only be obtained through merger and those which, because of the peculiar competitive situation in the area, were of particular benefit to the community.

Much of the Justice Department's argument is directed to the weight of the evidence supporting the district court's findings as to the provision of these various services. It should be noted that although the probable benefit to the community must clearly outweigh any anticompetitive effect of the merger, it is not necessary that the defendants prove that each specific benefit must nec-

essarily follow the merger. These benefits need only be *probable*. 12 U.S.C. 1828(c)(5)(B).

The Justice Department now seeks to extend the *Nashville* test to require that the banks seek a merger with other banks in the area before they decide upon the particular merger now before this Court. The proposal contains its own presumption: that this merger is somehow more anti-competitive than the other mergers it proposes. Without any evidence, that presumption necessarily fails.

The Justice Department now claims that merger with other First District banks should be considered as an "alternative" for these two small banks. This "alternative" was not available in May 1967 when the application was filed. It was not available when the Complaint was filed. It was not available when the trial was held in September and October of 1968. Only in July 1969, more than two years after application to merge was filed, was district-wide merger permitted. Clearly, the Justice Department cannot use the delay imposed on these two small banks to suggest an alternative which was never available at the relevant time.

The proposal also contains extreme practical difficulties. The incursions of large First District banks into the area have already severely reduced the alternatives in Warren County. These small banks cannot afford to pay a premium, while the large banks regularly do offer a premium for the stock of the acquired bank.

Also, a bank seeking to be acquired does not usually advertise its availability broadly. A small bank deciding that a merger is necessary to provide the required services to a growing community surely need not go as a supplicant to each and every one of the banks in the branching district. How does one establish that these

alternatives, other mergers, are not available? If the conservative attitudes of other banks are at all relevant, and clearly they must be, then it is evident on this record that they would not be available for merger. Also, what is the recourse of the remaining merger partner, left with the prospect of a large First District bank moving in?*

The practical difficulties are extreme and, in the light of the problems of immediacy evident here, the present course was clearly the best course if the public interest is to be served. If the proposal of the Justice Department be now adopted, then clearly marriages could only be made in heaven, in an ideal world arriving too late to preserve the future of these two small banks.

Because many other banks in the area have assumed a passive competitive posture, have not aggressively sought C & I business and have even discouraged trust business, the introduction of these services into the area is of paramount importance to the public both to serve a growing need and to stimulate competition. These specialists will directly expand not only the types of services offered, the terms of loans and their number, but also the geographic market presently covered by defendant banks. When related to the correlative changes in the lending limit, the capital structure and loan portfolio of the resulting bank, all of these changes associated with the hiring of specialized officers can be seen as both necessary preliminaries to their hiring and as directly serving

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* The Justice Department claims that Phillipsburg National and Second National could only seek to merge in the face of the incursions by large First District banks if destruction were imminent. This restatement of the failing company doctrine, which parallels the position taken by the Justice Department in *Nashville,* has already been rejected by this Court.

the convenience of the public. Thus, the convenience and needs that will redound to the public benefit here are direct and unique since they turn not only on the size of the present bank and its internal structure, but also on the passive altitude of its competitors in the community. Because the public in the area has waited so long for some of these services, the corresponding benefit to the public is that much clearer.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the district court.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 1093.—October Term, 1969

United States, Appellant, v. Phillipsburg National Bank and Trust Company et al.	On Appeal From the United States District Court for the District of New Jersey.

[June 29, 1970]

Mr. Justice Brennan delivered the opinion of the Court.

This direct appeal under the Expediting Act, 15 U. S. C. § 29, is taken by the United States from a judgment of the District Court of New Jersey dismissing, after full hearing, the Government's complaint seeking to enjoin as a violation of § 7 of the Clayton Act, 15 U. S. C. § 18,[1] the proposed merger of appellees, Phillipsburg National Bank and Trust Co. (PNB) and the Second National Bank of Phillipsburg (SNB), both located in Phillipsburg, New Jersey. The Comptroller of the Currency, also an appellee here, approved the merger in December 1967 and intervened in this action to defend it, as he was authorized to do by the Bank Merger Act of 1966, 12 U. S. C. § 1828 (c)(7)(D).[2] The Bank Merger Act re-

[1] Section 7, as amended by the 1950 Celler-Kefauver Antimerger Act, provides in pertinent part: "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or tend to create a monopoly."

[2] The merger was automatically stayed by the filing of this action. 12 U. S. C. § 1828 (c)(7)(A). The District Court continued the statutory stay pending disposition of the appeal.

teristic of banks of their size operating in small communities, PNB and SNB have less of their assets in commercial and industrial loans than do larger banks. They emphasize real estate loans and mortgages, and they have relatively more time and savings deposits than demand deposits. Similarly, their trust assets are quite small. In short, both banks are oriented toward the needs of small depositors and small borrowers. Thus, in 1967 75% of PNB's number of deposits and 73% of SNB's were $1,000 or less; 98% of PNB's number of total deposits and 97% of SNB's were $10,000 or less. Similarly, 75% of PNB's number of loan accounts and 59% of SNB's were $2,500 or less, and 93% and 87% respectively were $10,000 or less.

Both banks serve predominantly Phillipsburg residents. In 1967, although 91.6% of PNB's and 92% of SNB's depositors were residents of "one town," only 5.3% of PNB's and 9.0% of SNB's depositors lived in Easton. And, although 78.6% of PNB's and 87.2% of SNB's number of loans were made to residents of "one town," only 14.8% and 11.6% respectively went to persons living in Easton. A witness testified that all of the approximately 8,500 Phillipsburg families deal with one or another of the three commercial banks in that city. The town's businessmen prefer to do the same. The preference for local banks was strikingly evidenced by the fact that PNB and SNB substantially increased their savings deposit accounts during 1962–1967, even though their passbook savings rates were lower than those being paid by other readily accessible banks. At a time when Phillipsburg banks were paying 3.5% interest and Easton banks only 3%, other banks within a 13-mile radius were offering 4%.

Phillipsburg-Easton is in the northeastern part of the Lehigh Valley, a region of approximately 1,000 square miles, with a population of 492,000 in 1960 and 38 com-

BANK	No. of Offices	ASSETS			TOTAL DEPOSITS			DEMAND DEPOSITS			LOANS		
		Amt.	*Percent Phill.-East.*	*Percent Phill. Only*	*Amt.*	*Percent Phill.-East.*	*Percent Phill. Only*	*Amt.*	*Percent Phill.-East.*	*Percent Phill. Only*	*Amt.*	*Percent Phill.-East.*	*Percent Phill. Only*
Phillipsburg Nat. Bank	3	$23.9	11.2	44	$22.4	13.7	44.3	$6.5	11.3	45	$14.5	15.8	48.9
Second Nat. Bank	2	17.3	8.1	31.8	16	9.8	31.7	4.6	7.9	31.3	10.5	11.4	35.2
[Resulting Bank]	5	41.1	19.3	75.8	38.4	23.4	76.1	11.1	19.2	76.4	24.9	27.3	84.1
Phillipsburg Trust Co.	2	13.2	6.2	24.2	12.1	7.4	23.9	3.4	6.0	23.6	4.7	5.2	15.9
Easton Nat. Bank & Trust	5	75.6	35.5	—	67.7	41.4	—	25.4	44.1	—	32.6	35.7	—
Northampton Nat. Bank	1	23.2	10.9	—	19	11.6	—	6.4	11.0	—	6.5	7.1	—
Lafayette Trust Bank	2	27.7	13.0	—	24.3	14.8	—	10.8	18.8	—	11.8	12.9	—
Nazareth Nat. Bank	1	32.0	15.0	—	2.3	1.4	—	.53	.9	—	10.8	11.9	—
Totals	16	$212.8	100	100	$163.7	100	100	$57.7	100	100	$91.5	100	100

mercial banks in June 1968. There is considerable mobility among residents of the area for social, shopping and employment purposes. Customer preference and conservative banking practices, however, have tended to limit the bulk of each commercial bank's business to its immediate geographic area. Neither PNB nor SNB has aggressively sought business outside "one town." Similarly, most other banks in the Lehigh Valley have shown little interest in seeking customers in Phillipsburg-Easton. The District Court found that "[t]here is an attitude of complacency on the part of many banks [in the Valley]. They are content to continue outmoded banking practice and reluctant to risk changes which would improve service and extend services over a greater area to a larger segment of the population." 306 F. Supp., at 661.

The merger would reduce the number of commercial banks in "one town" from seven to six, and from three to two in Phillipsburg. The merged bank would have five of the seven banking offices in Phillipsburg and its environs and would be three times as large as the other Phillipsburg bank; it would have 75.8% on the city's banking assets, 76.1% of its deposits, and 84.1% of its loans. Within Phillipsburg-Easton PNB-SNB would become the second largest commercial bank, having 19.3% of the total assets, 23.4% of total deposits, 19.2% of demand deposits, and 27.3% of total loans. This increased concentration would give the two largest banks 54.8% of the "one town" banking assets, 64.8% of its total deposits, 63.3% of demand deposits, 63% of total loans, and 10 of the 16 banking offices.

We entertain no doubt that this factual pattern requires a determination whether the merger passes muster under the antitrust standards of *United States* v. *Philadelphia National Bank*, 374 U. S. 321 (1963), which were preserved in the Bank Merger Act of 1966. *United*

States v. *First National Bank of Houston, supra; United States* v. *Third National Bank in Nashville, supra.* Mergers of directly competing small commercial banks in small communities, no less than those of large banks in large communities, are subject to scrutiny under these standards. Indeed, competitive commercial banks, with their cluster of products and services, play a particularly significant role in a small community unable to support a large variety of alternative financial institutions. Thus, if anything, it is even more true in the small town than in the large city that "if the businessman is denied credit because his banking alternatives have been eliminated by mergers, the whole edifice of an entrepreneurial system is threatened; if the costs of banking services and credit are allowed to become excessive by the absence of competitive pressures, virtually all costs, in our credit economy, will be affected . . . ." *Philadelphia Bank*, 374 U. S., at 372.

When PNB and SNB sought the Comptroller's approval of their merger, as required by the Bank Merger Act, 12 U. S. C. § 1828 (c), independent reports on the competitive factors involved were obtained, as required by § 1828 (c)(4), from the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Attorney General. All three viewed the problem as involving commercial banking in Phillipsburg-Easton and reported that the merger would have a significantly harmful effect upon competition in that area. The Comptroller nevertheless approved the merger, finding that the agencies had defined the product and geographic markets too narrowly. He treated not Phillipsburg-Easton but most of the Lehigh Valley as the relevant geographic area, and evaluated competition from 34 finance companies and 13 savings and loan institutions, as well as from the more than 30 commercial banks in the area. The Comptroller concluded that the merger would have no signifi-

cant anticompetitive effect and, further, that it would enable the resultant bank to serve more effectively the convenience and needs of the community.

II

The Product Market

In *Philadelphia Bank* we said that the "cluster of products (various kinds of credit) and services (such as checking accounts and trust administration) denoted by the term 'commercial banking' . . . composes a distinct line of commerce." 374 U. S., at 356. As indicated, PNB and SNB offer the wide range of products and services customarily provided by commercial banks. The District Court made no contrary finding, and, in its actual evaluation of the effect of the merger upon competition, the court looked only to commercial banking as the relevant product market. See 306 F. Supp., at 655–661.

Earlier in its opinion, however, the District Court appeared to reject commercial banking as the appropriate line of commerce. Rather than focusing its attention upon the effect of the merger in diminishing competition among commercial banks, the court emphasized the competition between PNB–SNB and other types of financial institutions—for example, savings and loan associations, pension funds, mutual funds, insurance and finance companies. The court expressed its view that the activities of the merging banks "really make them much more . . . like savings institutions than like so many of the larger commercial banks," 306 F. Supp., at 648, and continued: "So, while the term 'commercial banking' may be used to designate the general line of commerce embracing all bank services, attention must be given in analysis of competition to different groupings within the line of commerce separating those products and services where absence of competition may be significant from those in which competition from many

sources is so widespread that no question of significant diminution of competition by the merger could be raised." 306 F. Supp., at 650–651.

The District Court erred. It is true, of course, that the relevant product market is determined by the nature of the commercial entities involved and by the nature of the competition which they face. See, *e. g.*, *United States* v. *Continental Can Co.*, 378 U. S. 441, 456–457 (1964). Submarkets such as the District Court defined would be clearly relevant, for example, in analyzing the effect on competition of a merger between a commercial bank and another type of financial institution. But submarkets are not a basis for the disregard of a broader line of commerce that has economic significance. See, *e. g.*, *Brown Shoe Co.* v. *United States*, 370 U. S. 294, 326 (1962).

Philadelphia Bank emphasized that it is the *cluster* of products and services which full service banks offer that as a matter of trade reality makes commercial banking a distinct line of commerce. Commercial banks are the only financial institutions in which a wide variety of financial products and services—some unique to commercial banking and others not—are gathered together in one place. The clustering of financial products and services in banks facilitates convenient access to them for all banking customers. For some customers, full service banking makes possible access to certain products or services that would otherwise be unavailable to them; the customer without significant collateral, for example, who has patronized a particular bank for a variety of financial products and services is more likely to be able to obtain a loan from that bank than from a specialty financial institution to which he turns simply to borrow money. In short, the cluster of products and services

termed commercial banking has economic significance well beyond the various products and services involved.[5]

Customers of small banks need and use this cluster of services and products no less than customers of large banks. A customer who uses one service usually looks to his bank for others as well, and is encouraged by the bank to do so. Thus, as was the case here, customers are likely to maintain checking and savings accounts in the same local bank even when higher savings interest is available elsewhere. See also *Philadelphia Bank, supra,* at 357 n. 34. This is perhaps particularly true of banks patronized principally by small depositors and borrowers for whom the convenience of one-stop banking and the advantages of a good relationship with the local banker—and thus of favorable consideration for loans—are especially important. See *id.*, at 358 n. 35, 369.

Moreover, if commercial banking were rejected as the line of commerce for banks with the same or similar ratios of business as those of the appellee banks, the effect would likely be to deny customers of small banks—and thus residents of many small towns—the antitrust protection to which they are no less entitled than customers

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[5] See also our statement in *Philadelphia Bank, supra,* at 356–357, that "[s]ome commercial banking products or services are so distinctive that they are entirely free of effective competition from products or services of other financial institutions; the checking account is in this category. Others enjoy such cost advantages as to be insulated within a broad range from substitutes furnished by other institutions. For example, commercial banks compete with small-loan companies in the personal-loan market; but the small-loan companies' rates are invariably much higher than the banks' . . . . Finally, there are banking facilities, which, although in terms of cost and price they are freely competitive with the facilities provided by other financial institutions, nevertheless enjoy a settled consumer preference, insulating them, to a marked degree, from competition; this seems to be the case with savings deposits."

of large city banks. Indeed, the need for that protection may be greater in the small town since, as we have already stated, commercial banks offering full service banking in one institution may be peculiarly significant to the economy of communities whose population is too small to support a large array of differentiated savings and credit businesses.

III

The Relevant Geographic Market

In determining the relevant geographic market, we held in *Philadelphia Bank, supra,* at 357, that "[t]he proper question to be asked . . . is not where the parties to the merger do business or even where they compete, but where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate. . . . This depends upon 'the geographic structure of supplier-customer relations.'" More specifically we stated that "the 'area of effective competition in the known line of commerce must be charted by careful selection of the market area in which the seller operates, and to which the purchaser can practicably turn for supplies . . . .'" *Id.,* at 359.

The District Court selected as the relevant geographic market an area approximately four times as large as Phillipsburg-Easton, with a 1960 population of 216,000 and 18 banks. The area included the city of Bethlehem, Pennsylvania. 306 F. Supp., at 652–653, 656–658. The court explicitly rejected the claim of the United States that Phillipsburg-Easton constitutes the relevant market. We hold that the District Court erred.

Commercial realities in the banking industry make clear that banks generally have a very localized business. We observed in *Philadelphia Bank, supra,* at 358, that "[i]n banking, as in most service industries, convenience of location is essential to effective competition. Individ-

uals and corporations typically confer the bulk of their patronage on banks in their local community; they find it impractical to conduct their banking business at a distance. . . . The factor of inconvenience localizes banking competition as effectively as high transportation costs in other industries." In locating "the market area in which the seller operates," it is important to consider the places from which it draws its business, the location of its offices and where it seeks business. As indicated, the appellee banks' deposit and loan statistics show that in 1967 they drew over 85% of their business from the Phillipsburg-Easton area and, of that, only about 10% from Easton. It has been noted that nearly every family in Phillipsburg deals with one of the city's three banks, and the town's businessmen prefer to do the same. All of PNB and SNB's banking offices are located within Phillipsburg or its immediate suburbs; although the city is sufficiently small so that there is easy access to its downtown area where the banks have their main offices, the banks found it necessary to open branches in the suburbs because that is "where the customers are." See also *Philadelphia Bank, supra,* at 358 n. 35. The "one town" banks generally compete for deposits within a radius of only a few miles.

The localization of business typical of the banking industry is particularly pronounced when small customers are involved. We stated in *Philadelphia Bank, supra,* at 361, that "in banking the relevant geographic market is a function of each separate customer's economic scale"—that "the smaller the customer, the smaller is his banking market geographically," *id.*, at 359 n. 36. Small depositors have little reason to deal with a bank other than the one most geographically convenient to them. For such persons, geographic convenience can be a more powerful influence than the availability of a higher rate of interest at a more distant, though still nearby,

bank. The small borrower, if he is to have his needs met, must often depend upon his community reputation and upon his relationship with the local banker. PNB, for instance, has made numerous unsecured loans on the basis of character, which are difficult for local borrowers to get elsewhere. And, as we said in *Philadelphia Bank, supra,* at 369, "[s]mall businessmen especially are, as a practical matter, confined to their locality for the satisfaction of their credit needs. . . . If the number of banks in the locality is reduced, the vigor of competition for filling the marginal small borrower's needs is likely to diminish." Thus, the small borrower frequently cannot "practicably turn for supplies" outside his immediate community; and the small depositor—because of habit, custom, personal relationships, and, above all, convenience—is usually unwilling to do so. See *id.,* at 357, n. 34. The patrons of PNB and SNB, of course, are small customers: almost 75% of the banks' deposits are for amounts less than $1,000, and virtually all of their loans are for less than $10,000, most falling below $2,500.

We observed in *Philadelphia Bank, supra,* at 361, that we were helped to our conclusion regarding geographic market "by the fact that the three federal banking agencies regard the area in which the banks have their offices as an 'area of effective competition.'" Here the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Attorney General found that a relevant banking market exists in the Phillipsburg-Easton area and that the proposed merger's competitive effect should be judged within it.[4] We agree. We find that the evidence

[4] The Government initially sought to show that Phillipsburg alone constituted the relevant geographic market. After the District Court rejected that proposal, the Government supported Phillipsburg-Easton and environs as the appropriate market and continues to do so in this Court.

shows that Phillipsburg-Easton constitutes a geographic market in which the proposed merger's effect would be "direct and immediate." It is the market area in which PNB and SNB operate, and, as a practical matter, it is the area in which most of the merging banks' customers must, or will, do their banking. Thus, we hold that the District Court mistakenly rejected the Government's contention that Phillipsburg-Easton is an appropriate "section of the country" under § 7.

Appellee banks argue that Phillipsburg-Easton "cannot conceivably be considered a 'market' for antitrust purposes," on the ground that it is not an "economically significant section of the country." They cite our language in *Brown Shoe, supra,* at 320, that "[t]he deletion of the word 'community' in the original [Clayton] Act's description of the relevant geographic market is another illustration of Congress' desire to indicate that its concern was with the adverse effects of a given merger on competition only in an economically significant 'section' of the country." In *Brown Shoe,* however, we found "relevant geographic markets" in cities "with a population exceeding 10,000 and their environs." *Id.,* at 339. Phillipsburg-Easton and their immediate environs had a population of almost 90,000 in 1960. Seven banks compete for their business. This market is clearly an economically significant section of the country for the purposes of § 7.

IV

The Anticompetitive Effects of the Merger

We turn now to the ultimate question under § 7: whether the effect of the proposed merger "may be substantially to lessen competition." We pointed out in *Philadelphia Bank, supra,* at 362, that a prediction of anticompetitive effects "is sound only if it is based upon a firm understanding of the structure of the relevant

market; yet the relevant economic data are both complex and elusive. . . . And unless businessmen can assess the legal consequences of a merger with some confidence, sound business planning is retarded. . . . So also, we must be alert to the danger of subverting congressional intent by permitting a too-broad economic investigation. . . . And so in any case in which it is possible, without doing violence to the congressional objective embodied in § 7, to simplify the test of illegality, the courts ought to do so, in the interest of sound and practical judicial administration." We stated in *Brown Shoe, supra,* at 315, that "[t]he dominant theme pervading congressional consideration of the 1950 amendments to [§ 7] was a fear of what was considered to be a rising tide of economic concentration in the American economy." In *Philadelphia Bank, supra,* at 363, we held that "[t]his intense congressional concern with the trend toward concentration warrants dispensing, in certain cases, with elaborate proof of market structure, market behavior, or probable anticompetitive effects. Specifically, we think that a merger which produces a firm controlling an undue percentage share of the relevant market, and results in a significant concentration of firms in that market, is so inherently likely to lessen competition substantially that it must be enjoined in the absence of evidence clearly showing that merger is not likely to have such anti-competitive effects." That principle is applicable to this case.

The commercial banking market in Phillipsburg-Easton is already concentrated. Of its seven banks, the two largest in 1967—Easton National Bank and Lafayette Trust Co.—had 49% of its total banking assets, 56% of its total deposits, 49% of its total loans and seven of its 16 banking offices. Easton National is itself the product of the merger of two smaller banks in 1959. The union of PNB–SNB would, in turn, significantly

increase commercial banking concentration in "one town." The combined bank would become the second largest in the area, with assets of $41,100,000 (19.3% of the area's assets), total deposits of $38,400,000 (23.4%), and total loans of $24,900,000 (27.3%). The assets held by the two largest banks would then increase from 49% to 55%, the deposits from 56% to 65%, the loans from 49% to 63%, and the banking offices from seven to 10. The assets held by the three largest banks would increase from 60% to 68%, the deposits from 70% to 80%, the loans from 64% to 76%, and the banking offices from 10 to 12. In Phillipsburg alone, of course, the impact would be much greater: banking alternatives would be reduced from three to two; the resultant bank would be three times larger than the only other remaining bank, and all but two of the banking offices in the city would be controlled by one firm. Thus, we find on this record that the proposed merger, if consummated, "is . . . inherently likely to lessen competition substantially." Cf. *Philadelphia Bank, supra; Nashville Bank, supra; United States* v. *Von's Grocery Co.*, 384 U. S. 270 (1966); *United States* v. *Pabst Brewing Co.*, 384 U. S. 546 (1966).

Appellee banks argue that they are presently so small that they lack the personnel and resources to serve their community effectively and to compete vigorously. Thus, they contend that the proposed merger could have procompetitive effects: by enhancing their competitive position, it would stimulate other small banks in the area to become more aggressive in meeting the needs of the area and it would enable PNB–SNB to meet an alleged competitive challenge from large, outside banks. Although such considerations are certainly relevant in determining the "convenience and needs of the community" under the Bank Merger Act, they are not persuasive in the context of the Clayton Act. As we said in *Philadelphia Bank, supra*, at 371, for the purposes of § 7, "a merger the effect

of which 'may be substantially to lessen competition' is not saved because, on some ultimate reckoning of social or economic debits or credits, it may be deemed beneficial."

The District Court stated: "Ease of access to the market is also a factor that deserves consideration in evaluating the anticompetitive effects of a merger. It is not difficult for a small group of business men to raise sufficient capital to establish a new small bank when the banking needs of the community are sufficient to warrant approval of the charter." 306 F. Supp., at 659. Appellants, however, made no attempt to show that a group of businessmen would move to start a new bank in Phillipsburg-Easton, should the proposed merger be approved. The banking laws of New Jersey and Pennsylvania severely restrict the capacity of existing banks to establish operations in "one town." Relying on a recent New Jersey banking statute, N. J. Stat. Ann. § 17:9A–19 (Supp. 1969), appellants contend that "[t]here is no doubt that the three banks in Phillipsburg . . . are fair game for attractive merger proposals by the large banks from Bergen, Passaic, Esse, Hudson and Morris Counties." But as the District Court pointed out, "Large city banks in Newark and in other well populated cities in the counties mentioned can now establish branch banks in Warren County [only] in any municipality in which no banking institution has its principal office or a branch office and in any municipality which has a population of 7,500 or more where no banking institution has its principal office . . . ." 306 F. Supp., at 660. Thus, mergers under § 17:9A–19 are possible in Phillipsburg only with the three banks now in existence there. Accordingly, mergers under this statute would not bear upon the anticompetitive effects in question, because they could not increase the number of banking alternatives in "one town."

Since the decision below, the Court of Appeals for the Third Circuit has held that a national bank may avoid the New Jersey bar against branching, N. J. Stat. Ann. § 17:9A–19 (B)(3) (1963), by moving its headquarters into a protected community, such as Phillipsburg, while simultaneously reopening its former main office as a branch. *Ramapo Bank* v. *Prospect Park National Bank*, — F. 2d — (1970). We intimate no view upon the correctness of that decision. We do observe, however, that the District Court decision in *Ramapo Bank*, affirmed in the recent Court of Appeals ruling, was handed down almost five months before the present District Court decision. Both opinions were written by the same District Judge. Accordingly, had an outside national bank been interested in moving its main office to Phillipsburg, no doubt this fact would have been made known to the District Court or to this Court. Nothing in the present record suggests that any national bank now located outside Phillipsburg will apply to move its main office to that city; therefore, on the record before us, that possibility does not bear on the anticompetitive effects of the merger.

V

Meeting the Convenience and Needs of the Community

The District Court's errors necessarily require reexamination of its conclusion that any anticompetitive effects caused by the proposed merger would be outweighed by the merger's contribution to the community's convenience and needs. The District Court's conclusion, moreover, is undermined by the court's erroneous application of the convenience-and-needs standard. In the balancing of competitive effect against benefit to community convenience and needs, "[t]o weigh ade-

quately one of these factors against the other requires a proper conclusion as to each." *Nashville Bank, supra,* at 183.

The District Court misapplied the convenience-and-needs standard by assessing the competitive effect of the proposed merger in the broad, multi-community area which it adopted as the relevant geographic market, while assessing the merger's contribution to community convenience and needs in Phillipsburg alone. Appellees argue that "[n]owhere does the district court equate 'community' with Phillipsburg." We disagree. In determining convenience and needs, the court stated that "[t]here are two banking services which must be improved in the area to satisfy present and rapidly increasing need. Lending limits of the small banks are not sufficient to satisfy loan requirements for substantial industrial and commercial enterprise. . . . There is a definite lack of competent trust service and . . . servicing of substantial trust accounts must be obtained outside the community . . . . If the merger is approved, the merged bank can establish [loan and trust] departments and staff them with personnel capable of the kind of loan and trust service that patrons must, in large part, now seek outside the community." 306 F. Supp., at 661. The court then cited examples of persons in Phillipsburg who found the existing loan and trust services in that city inadequate. *Id.*, at 662–666. Since several Easton banks already provide appreciable trust services and have legal lending limits greater than those of PNB–SNB combined, it is obvious that the court was primarily concerned with loan and trust possibilities in Phillipsburg. We hold, however, that evaluation must be in terms of the convenience and needs of Phillipsburg-Easton as a whole.

Section 1828 (c)(5)(B) provides that "any . . . proposed merger transaction whose effect in any section of

the country may be substantially to lessen competition . . . [shall not be approved by the responsible banking agency] unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served." Representative Reuss explained during debate on the Bank Merger Act that "[w]hat is meant by [§ (c)(5)(B)] and what counts is the effect of the transaction in meeting the needs and conveniences of the community which that particular sought-to-be merged bank serves." 112 Cong. Rec. 2457. He indicated that "in a community having say, 10 banks of relatively equal size, and where one of the banks was in difficulty—say with regard to a problem of management succession—the 'convenience and needs of the community' would be best served if that bank were permitted to merge with one of the other 9 banks despite some anticompetitive effects." *Id.*, at 2445.

These comments support our conclusion that the geographic market—the "community which that particular sought-to-be merged bank serves"—is the area in which convenience and needs must be evaluated. Commercial realities, moreover, make clear that the "community to be served" is virtually always as large, or larger, than the geographic market. Although the area in which merging banks compete while they are still separate entities is often smaller than the area in which the resultant bank will compete, it is rare that the community served by a merged bank is smaller than that served by its constituent firms prior to their merger. Further, evaluation of convenience and needs in an area smaller than the geographic market could result in the approval of a merger which, though it has anticompetitive effects throughout the market, has countervailing beneficial im-

pact in only part of the market. Under the approach taken by the District Court, anticompetitive effects in some parts of a relevant geographic market could be justified by community benefits in other parts of it. Such a result would subvert the clear congressional purpose in the Bank Merger Act that convenience and needs not be assessed in only a part of the community to be served, and such a result would unfairly deny the benefits of the merger to some of those who sustain its direct and immediate anticompetitive effects.[6] Cf. *Philadelphia Bank, supra,* at 370. Accordingly, we hold that the District Court erred in failing to assess the proposed merger's effect in terms of the convenience and needs of the relevant geographic market.

We held in *Nashville Bank, supra,* at 190, that "before a merger injurious to the public interest is approved, a showing [must] be made that the gain expected from the merger cannot reasonably be expected through other means." Thus, before approving such a merger, a district court must "reliably establish the unavailability of alternative solutions to the woes" faced by the merging banks. *Ibid.* Accordingly, on remand, the District Court should consider in concrete detail the adequacy of attempts by PNB and SNB to overcome their loan, trust, and personnel difficulties by methods short of their own merger. Beyond careful consideration of alternative methods of serving the convenience and needs of Phillipsburg-Easton, the Court should deal specifically with whether the proposed merger is likely to benefit all seekers of banking services in the community, rather than simply those interested in large loan and trust services.

[6] We do not suggest that it would be inappropriate to focus on the convenience and needs of a segment of the geographic market so long as benefits to that segment would accrue to the entire market. We intimate no view of the weight to be attached to benefits which may accrue to areas beyond the relevant market.

The judgment of the District Court is reversed and the case is remanded for further proceedings consistent with this opinion. No costs shall be assessed against appellee banks.

It is so ordered.

MR. JUSTICE STEWART took no part in the decision of this case, and MR. JUSTICE BLACKMUN took no part in its consideration or decision.

SUPREME COURT OF THE UNITED STATES

No. 1093.—October Term, 1969

United States, Appellant, *v.* Phillipsburg National Bank and Trust Company et al.	On Appeal From the United States District Court for the District of New Jersey.

[June 29, 1970]

Mr. Justice Harlan, with whom The Chief Justice joins, concurring in part and dissenting in part.

My first reaction to this case, from the vantage point of what is depicted in the record and briefs, was wonderment that the Department of Justice had bothered to sue. How could that agency of government, I asked myself, be efficiently allocating its own scarce resources if it chose to attack a merger between two banks as small as those involved in this case? When compared with any of the 10 prior cases in which a bank merger was contested, the total assets of the bank that would result from this merger are minuscule.[1] Moreover, measured by trust

[1] The Appendix (p. 831) contains the following table showing the total assets of the resulting banks in the contested bank merger cases initiated up to the time of suit in this case.

CONTESTED SECTION 7 BANK MERGER CASES: ASSETS AND MARKET SHARES OF RESULTING BANKS

Case	*Assets (in millions)*
1. Manufacturers Hanover	$6,001.8
2. Continental Illinois	3,248.3
3. Crocker-Citizens	3,217.4
4. California Bank—First Western	2,421.2
5. Philadelphia National Bank	1,805.3
6. Provident—Central Penn	1,069.1
7. First City—Southern National (Houston)	1,042.9
8. Mercantile Trust—Security Trust	1,040.4
9. Third National—Nashville Bank & Trust	428.2
10. First National—Cooke Trust Company	389.7
11. Phillipsburg National—Second National	41.1

assets, the Phillipsburg National Bank in 1968 ranked 1346th and the Second National Bank of Phillipsburg 2429th out of the approximately 3100 banks with trust powers in the United States. If the two banks were merged, the resulting bank would have ranked 1323d—only 23 places ahead of the Phillipsburg National alone.[2] With tigers still at large in our competitive jungle, why should the Department be taking aim at such small game?

The Court's disposition of this case provides justification enough *from the Department's point of view.* After today's opinion the legality of every merger of two directly competing banks—no matter how small—is placed in doubt if a court, through what has become an exercise in "antitrust numerology," *United States* v. *First National Bank & Trust Co. of Lexington,* 376 U. S. 665, 673 (1964) (HARLAN, J., dissenting), concludes that the merger "produces a firm controlling an undue percentage share of the relevant market," *ante,* at 13.

I

Under the Bank Merger Act it is now settled that a court must engage in a two-step process in order to decide whether a proposed merger passes muster. First, the effect of the merger upon competition must be evaluated, applying the standards under § 7 of the Clayton Act, *United States* v. *Third National Bank in Nashville,* 390 U. S. 171, 181–183 (1968). If there would be a violation, the court must then proceed to decide whether "the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served."[3]

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[2] App. 840.

[3] Bank Merger Act of 1966, amending § 18 (c)(5)(B) of the Federal Deposit Insurance Act, 12 U. S. C. § 1828 (c)(5)(B) (1964 ed. Supp. IV). I do not quarrel with the Court's conclusion that

For the first stage of the analysis, the Court appears to decide whether the effect of this proposed merger "may be substantially to lessen competition" by the following process: First, the Court defines the relevant product market as commercial banking. Second, it defines the geographic market as Phillipsburg-Easton.[4] The Court next calculates the percentage share of this market that would be held by the proposed merged bank,[5] and the resulting changes in "concentration," as measured by the percent of market held by the two largest[6] and three largest banks.[7] It appears that from the magnitude of these figures alone, the Court concludes that the proposed merger would "significantly increase commercial banking

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the District Court improperly analyzed "convenience and needs," in the second stage, because of its erroneous choice of Phillipsburg alone as the relevant "community."

[4] I accept the Court's conclusion that the appropriate geographic market here is the Phillipsburg-Easton area, and agree that the geographic market designated by the District Court was too broad, given the small size of the banks involved in this case.

[5] PERCENTAGE OF PHILLIPSBURG-EASTON MARKET HELD BY MERGED BANKS

Bank Assets	19.3
Total Deposits	23.4
Total Loans	27.3

[6] PERCENTAGE OF PHILLIPSBURG-EASTON MARKET HELD BY TWO LARGEST BANKS

	Before	*After*	*Change*
Bank Assets	49	55	6
Total Deposits	56	65	9
Total Loans	49	63	14

[7] PERCENTAGE OF PHILLIPSBURG-EASTON MARKET HELD BY THREE LARGEST BANKS

	Before	*After*	*Change*
Bank Assets	60	68	8
Total Deposits	70	80	10
Total Loans	64	76	12

concentration" in an "already concentrated" market.[8] On the basis of the magnitude of these figures alone the Court concludes that this merger would violate § 7 of the Clayton Act.

I have voiced my disagreement before, particularly in the banking field, to the " 'numbers game' test for determining Clayton Act violations," *United States* v. *Third National Bank, supra,* at 193; (HARLAN, J., concurring in part and dissenting in part); see *United States* v. *First Nat. Bank, supra,* at 673 (HARLAN, J., dissenting). Although I consider myself bound by the Court's decision

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[8] It is significant to note that the percentage figures in this case are themselves *smaller,* on the whole, than those found either in the *Philadelphia Bank* case *supra,* or *Third National Bank* case, *supra.*

PERCENTAGE OF TOTAL ASSETS IN RELEVANT MARKET HELD BY MERGED BANKS

This case		19.3
Third Nat. Bank		38.4
Philadelphia Bank	(at least 30%)	36*

PERCENTAGE OF TOTAL ASSETS IN RELEVANT MARKET HELD BY TWO LARGEST BANKS

	Before	*After*
This case	49	55
Third Nat. Bank	72	77
Philadelphia Bank	44	59

PERCENTAGE OF TOTAL ASSETS IN RELEVANT MARKET HELD BY THREE LARGEST BANKS**

	Before	*After*
This case	60	68
Third Nat. Bank	93	98

*For purposes of its holding in *Philadelphia Bank,* the Court "shade[d]" the 36% figure downward to "at least 30%" to compensate for the approximate nature of certain assumptions implicit in the manner in which it calculated the market shares, see *Philadelphia Bank, supra,* at 364 n. 40.

**Because *Philadelphia Bank* involved a merger between the second and third largest banks, the percentage held by the three largest was not used in that case.

in *Philadelphia Bank*, see *United States* v. *Third National Bank*, *supra*, at 193, I cannot concur in the simplistic way in which the Court applies the numbers test here.

Philadelphia Bank did not hold that all bank mergers resulting in an "undue percentage share of a relevant market" and "in a significant increase in the concentration of firms in that market," *id.*, at 363, *necessarily* violated § 7 of the Clayton Act. Instead that case established a rule by which the percentage figures alone do no more than "raise an inference," *id.* at 365, that the merger will significantly lessen competition. *Philadelphia Bank* left room, however, for the merging companies to show that the "merger is not likely to have such anti-competitive effects," *id.*, at 363. In short, under the *Philadelphia Bank* test, the percentage figures create a rebuttable presumption of illegality.

In this case there are two aspects of market structure, each largely ignored by the Court, that I think might well rebut the presumption raised by the percentage figures that the merger will have a significant effect on competition. Consequently, I think the defendants should on remand be given an opportunity to show by "clear evidence" that despite the percentage figures, the anticompetitive effects of this merger are not significant.

II

The first of these aspects of the market structure concerns "entry." The percentage figures alone tell nothing about the conditions of entry in a particular market. New entry can, of course, quickly alleviate "undue" concentration. And the possibility of entry can act as a substantial check on the market power of existing competitors.

Entry into banking is not simply governed by free market conditions, of course, for it is also limited by reg-

ulatory laws. When the complaint in this case was filed, entry into the Easton-Phillipsburg market was very much restricted by both the Pennsylvania and New Jersey banking statutes.[9] However, a recent change in the New Jersey statute [10] together with a new opinion of the Court of Appeals for the Third Circuit rendered since the trial in this case,[11] appear to increase considerably the possibility of new entry into Phillipsburg. For the first time it may be possible for any national bank already operating anywhere in the northern region of New Jersey to open, under certain circumstances, a new office in Phillipsburg.[12]

If one assumes the regulatory barriers to entry have been permanently lowered, it would seem that the competitive significance of this merger may well be con-

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[9] New Jersey, at the time suit was filed here, (1) prohibited the merger of banks located in different counties; (2) restricted branch banking to the county in which the parent bank was located; (3) precluded branching altogether into cities in which another bank had a "principal office" (*i. e.*, home office), or into communities in which a bank or branch was already located. See N. J. Stat. Ann. § 17:9A–19 (B) (1963).

[10] On July 17, 1969, a new banking statute came into effect that regulates, not on the basis of counties, but instead on the basis of three banking districts, of which Phillipsburg is in the first. District-wide *de novo* branching and mergers are authorized, subject to a "principal office" protections provision, N. J. Stat. Ann. § 17:9A-19 (B)(3) (Supp. 1970).

[11] *Ramapo Bank* v. *Prospect National Bank*, — F. 2d — (C. A. 3d Cir. 1970). I intimate, of course, no views concerning the correctness of this decision.

[12] Because Phillipsburg is the location of a home office, the home-office protection proviso might be thought to preclude *de novo* branching there. However, the *Ramapo Bank* decision of the Third Circuit, *supra*, held that a national bank, by moving its main office into a protected community while simultaneously reopening its former main office as a branch, could avoid the operation of the "home-office protection" proviso of the New Jersey law. Under *Ramapo*, therefore, it is possible for any national bank willing to shift its "home-office" to Phillipsburg to enter that market.

siderably overstated by the percentage figures alone. Certainly new entry into the market involved in this case would be both easier and of much greater competitive significance than in the *Philadelphia Bank* market. In a market dominated by banks of enormous absolute size, with assets of hundreds of millions and even billions of dollars, it is of course unlikely that a new entrant will quickly become a substantial competitive force. The same is not true, however, of a market in which the largest competitor is, in absolute terms, rather small.

In short, I think the significance of the percentage figures recited in the Court's opinion can only be fully evaluated after consideration of the present entry conditions in the Easton-Phillipsburg area. Because of the new developments in the New Jersey regulation of banking that have occurred since the trial of this case, I think it inexcusable of the majority not to give the appellee banks an opportunity on remand to demonstrate whether there is now a substantial possibility of new entry, and if so, what effect that possibility had on the market power of the combined bank.[13]

III

Quite apart from entry, there is another aspect of the market structure relevant here that affects the significance of the percentage figures cited by the Court. Relying on *Philadelphia Bank*, the Court concludes that

[13] It is simply untenable for the majority to ignore the bearing of this issue on the "anticompetitive effect" of this merger on the ground that "[n]othing in the present record suggests that any national bank presently located outside of Phillipsburg will apply to move its main office to that city," *ante* —. At the time the present record was developed, existing law rendered that inquiry irrelevant. Moreover, the District Court found, quite apart from entry, that the proposed merger had no significant anticompetitive effect. It is therefore quite inappropriate for the majority to suggest that the failure of the District Court to reopen the record in light of its *Ramapo* decision is of any significance.

the "cluster of products . . . and services denoted by the term 'commercial banking' . . . composes a distinct line of commerce" for purposes of this case. The Court eschews all analysis of the *composition* of the products and services offered by appellee banks, however. The Court thus manages to ignore completely the extent to which competition from savings and loan companies, mutual savings banks, and other financial institutions that are not commercial banks affects the market power of the appellee banks.

A closer analysis of what the merging banks here do, plainly shows that they have more in common with savings and loan institutions and mutual savings banks than with the big city commercial banks considered in *Philadelphia Bank*. In particular, a much higher percentage of the total deposits of the banks here comes from savings accounts as opposed to demand deposits than is true of big city commercial banks.[14] Moreover, a much larger proportion of the total loans of these small banks is in the form of real estate or personal loans as opposed to commercial loans.[15] Savings and

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[14] TIME AND SAVINGS DEPOSITS AND DEMAND DEPOSITS AS PERCENTAGE OF TOTAL DEPOSITS

	Time & Saving	*Demand*
PNB	71	29
SNB	72	28
Large Bank Average*	45	55

*The average for 341 banks with assets over $100 million which submit weekly reports to the Federal Reserve.

Calculated from App. 788.

[15] REAL ESTATE LOANS AND PERSONAL LOANS AS PERCENTAGE OF TOTAL LOANS

	Real Estate	*Personal*	*Combined*
PNB	54	28	82
SNB	72	14	86
Large Bank Average*	14	8	22

*See n. 14, *supra*.

Calculated from App. 788.

loan companies, savings banks, credit unions, etc., are of much greater competitive significance in this market than in the market analyzed in *Philadelphia Bank*. For in this market, these nonbank financial institutions offer close substitutes for the products and services that are most important to the appellee banks.

In choosing its product market, the Court largely ignores these subtleties and instead emphasizes the *cluster* of services and products which in the Court's words "makes commercial banking a distinct line of commerce." Because the Court does not explain why that combination has any substantial synergistic effect, cf. *Anderson's-Black Rock, Inc.* v. *Pavement Salvage Co., Inc.*, 396 U. S. 57, 61 (1969), the Court's choice of a product market here can be seriously questioned. Certainly a more discriminating conclusion concerning the antitrust implication of this merger could be made if separate concentration percentages were calculated for each of the important products and services provided by appellee banks, and then an over-all appraisal made of the effect of this merger on competition.

In any event, even assuming that for purposes of a preliminary analysis one were to use commercial banking as the line of commerce for the antitrust analysis—if only for the sake of convenience—that does not excuse the majority's failure to consider the competitive realities of the case in appraising the *significance* of the concentration percentages thus calculated, see *United States* v. *First Nat. Bank of Maryland*, 310 F. Supp. 157, 175 (D. C. Md. 1970). The bare percentages *themselves* are not affected by the presence or absence of significant competition for important bank products or services from firms outside commercial banking. By treating these percentages as no different from those found in *Philadelphia Bank*, the Court blithely assumes that percentages of the same order of magnitude represent the same

degree of market power, irrespective of the amount of competition from neighboring markets.

Seen another way, the Court's mode of analysis makes too much turn on the all-or-nothing determination that the relevant product market either includes or does not include products and services of savings and loans companies, and other competition. A far better approach would be to recognize the fact that a product or geographic market is at best an approximation—necessary to calculate some percentage figures. In evaluating such figures, however, a court should not decide the case simply by the magnitude of the numbers alone—it should give the appellees on remand an opportunity to demonstrate that the numbers here significantly "overstate" the competitive effects of this merger because of the approximate nature of the assumptions underlying the Court's definition of the relevant market.

In short, I think that this case should be remanded to the District Court so that it might re-evaluate whether, in light of the entry conditions and existing competition from savings and loans and similar financial institutions, the merger can fairly be said to threaten a substantial loss of competition in the Phillipsburg-Easton area. Cf. *White Motor Co.* v. *United States*, 372 U. S. 253 (1963). If the District Court concludes that the merger would so threaten competition, it should then, in the manner the Court's opinion suggests, proceed to decide whether there are countervailing public interest advantages.